

**In Re:**  
*ORLY GENGER*  
*Main Case No. 19-13895-jlg*

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*March 4, 2020*

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

ORLY GENDER,	Main Case No.
Debtor.	19-13895-jlg

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United States Bankruptcy Court  
One Bowling Green  
New York, New York

March 4, 2020  
10:16 AM

B E F O R E:

HON. JAMES L. GARRITY JR. (TELEPHONICALLY)  
U.S. BANKRUPTCY JUDGE

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2 Case conference

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ALSO PRESENT:

SAGI GENDER  
ORLY GENDER#, Debtor

ORLY GENDER

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1 P R O C E E D I N G S

2 THE COURT: All right, Orly Gender, Case Number 19-  
3 13895.

4 (Pause)

5 MR. CAVALIERE: Good morning, Your Honor. Rocco  
6 Cavaliere, Tarter Krinsky, on behalf of Deborah Piazza, the  
7 successor Chapter 7 trustee. Also with me is Deborah Piazza.

8 MS. PIAZZA: Good morning, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. CAVALIERE: Good morning. There are a number of  
11 people here today, Your Honor, so this might take a while.

12 MR. PITTA: Good morning, Your Honor.

13 THE COURT: Okay.

14 MR. PITTA: Thomas Pitta Emmet, Marvin & Martin,  
15 together with John Dellaportas, my partner, here on behalf of  
16 Sagi Gender and TPR Investments. And Mr. Gender is actually in  
17 court with us as well.

18 THE COURT: Okay -- whoa, whoa, whoa.

19 MR. PITTA: Sorry.

20 THE COURT: Okay, once second. One -- hold it. Your  
21 last name again, please?

22 MR. PITTA: It's Pitta. P-I-T-T-A.

23 THE COURT: All right. And I know you have Mr.  
24 Dellaportas with you. And who are you representing?

25 MR. PITTA: Sagi Gender and TPR Investments. And Mr.



ORLY GENDER

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1 Genger is in --

2 THE COURT: I'm sorry, the first name?

3 MR. PITTA: -- court with us.

4 THE COURT: S-E-G-I (sic) Genger?

5 MR. PITTA: S-A-G-I. Yes.

6 THE COURT: Okay. That's the debtor's brother; is  
7 that right?

8 MR. PITTA: Correct, Your Honor.

9 THE COURT: Okay. And what's the other entity you're  
10 representing?

11 MR. PITTA: TPR Investments, which is a creditor in  
12 the estate as well.

13 THE COURT: Okay. Thank you.

14 MR. OSWALD: Good morning, Your Honor. Frank Oswald  
15 from Togut, Segal & Segal, with my colleague, Brian Moore. We  
16 represent Arie Genger, the debtor's father.

17 THE COURT: All right.

18 MS. WLODINGUER: Julie Wlodinguer --

19 THE COURT: Hold it.

20 MS. WLODINGUER: -- on behalf of the debtor.

21 THE COURT: Hold -- excuse me. Hold -- hold it. Hold  
22 it, please.

23 Mr. Oswald, who else do you have with you?

24 You have your colleague -- who's your colleague who's  
25 with you in court?

ORLY GENDER

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1 MR. OSWALD: For Arie.

2 MR. MOORE: Brian Moore.

3 MR. OSWALD: Yeah, Brian Moore. M-O-O --

4 THE COURT: Yeah, I got that. Thank you very much.  
5 All right, next.

6 MS. WLODINGUER: Julie Wlodinguer from Reitler Kailas  
7 & Rosenblatt, on behalf of the debtor, Orly Genger.

8 THE COURT: All right, now, spell your last name,  
9 please.

10 MS. WLODINGUER: W-L-O-D-I-N-G-U-E-R.

11 THE COURT: Thank you.

12 MR. POLLOCK: Good morning, Your Honor. Adam Pollock  
13 from Pollock Cohen, on behalf of the Orly Genger Trust. And  
14 with me today is -- I'll let her introduce herself.

15 MS. ABOULAFIA: Good morning, Your Honor.

16 THE COURT: Hold on one --

17 MS. ABOULAFIA: Elizabeth Aboulafia from Cullen and  
18 Dykman, also on behalf of the Orly Genger Trust.

19 THE COURT: All right. Spell your last name, please.

20 MS. ABOULAFIA: A-B-O-U-L-A, F as in "Frank", I-A.

21 THE COURT: Thank you.

22 MS. ABOULAFIA: Thank you, Your Honor.

23 THE COURT: All right. Is there anyone else there?

24 MR. TOKAYER: Good morning, Your Honor. Ira Tokayer.  
25 I represent D&K GP and Dalia Genger. And I'm here on my own.

ORLY GENDER

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1 THE COURT: Okay. And I'm sorry, can you tell me who  
2 you represent, again, please?

3 MR. TOKAYER: D&K GP and Dalia --

4 THE COURT: D?

5 MR. TOKAYER: D&K GP --

6 THE COURT: Okay.

7 MR. TOKAYER: -- and Dalia, D-A-L-I-A, Genger.

8 THE COURT: Right.

9 MR. TOKAYER: That's the debtor's mom.

10 THE COURT: Thank -- yes. Thank you.

11 All right, is there anyone else there?

12 MR. GARTMAN: Good morning, Your Honor. Chris Gartman  
13 from Hughes Hubbard & Reed. That's G-A-R-T-M-A-N.

14 THE COURT: And I'm sorry --

15 MR. GARTMAN: And I'm on behalf of a third-party  
16 litigation funder, ADBG LLC. That is a party-in-interest.

17 THE COURT: ADBG?

18 MR. GARTMAN: That's correct.

19 THE COURT: LLC. Okay.

20 MR. HERSCHMANN: Your Honor, Eric Herschmann, H-E-R-S-  
21 C-H-M-A-N-N. I'm here on behalf of myself.

22 THE COURT: All right. And what's your relationship  
23 to the case?

24 MR. HERSCHMANN: I am a creditor, and I happen to be  
25 the spouse of the debtor.

1 THE COURT: Oh. Okay. All right.

2 Anyone else?

3 All right, so again, thanks for coming in. I'm sorry  
4 I'm not able to be in the courtroom with you. What I'd like to  
5 do is start with either the trustee or her counsel, and give me  
6 some overview of where things stand in the case. I know  
7 there're a lot of moving pieces. I had a chance to read some  
8 of the state-court documents, but I didn't -- I just was not  
9 able to spend as much time as I had hoped to, doing that.

10 One of the things I am very curious about is the  
11 status -- if I've got this right, the status of litigation  
12 that's pending in the Southern District of New York. Is there  
13 pending litigation there?

14 MR. CAVALIERE: Yes, Your Honor. Rocco Cavaliere,  
15 Tarter Krinsky & Drogin, here on behalf of the trustee.

16 THE COURT: Hi. All right.

17 MR. CAVALIERE: There were two -- and I apologize,  
18 Your Honor. Feel better. I'm sorry that you couldn't be here  
19 today.

20 THE COURT: Yeah, that's fine. Thank you.

21 MR. CAVALIERE: And I'll certainly provide a brief  
22 background. And I'm glad that you read some papers, Your  
23 Honor, because I was drafting my presentation -- this is a --  
24 this is a case -- this family that has been in litigation for  
25 over fifteen years. And as I was going through and tried to

1 identify all of the issues that have presented themselves, it  
2 was really burdensome. So I'll give you very high-level  
3 background in a bit, but I want to respond to your direct  
4 questions.

5 There were two --

6 THE COURT: Are you with me?

7 MR. CAVALIERE: -- surrogate-court matters --

8 THE COURT: I'm sorry. I'm sorry, I'm sorry. Mr.  
9 Cavaliere, just one second. Let me just tell you what I would  
10 like to accomplish today. I know there -- I want to hear from  
11 all of you, and then what I would like to get is an  
12 understanding of what it is that each of you guys would like --  
13 each of the parties would like to do in the case. I know  
14 there's some litigation there that --

15 Mr. Tokayer, I think you recently filed a complaint on  
16 behalf of your clients in this matter.

17 And I want to get a sense, are all -- what all the  
18 litigation is, and then think about how we're going to organize  
19 it.

20 So I'm sorry to interrupt you, Mr. Cavaliere, but  
21 please go ahead.

22 MR. CAVALIERE: Okay. No worries, Your Honor.

23 This case -- the bankruptcy case, as you know, started  
24 in Texas in July. And during the Texas proceeding, the prior  
25 trustee removed two surrogate-court matters to the district

1 court in the Southern District. Normally --

2 THE COURT: Excuse me. July 2019?

3 MR. CAVALIERE: Yes. The bankruptcy case commenced in  
4 the Western District of Texas in July 2019.

5 THE COURT: Okay.

6 MR. CAVALIERE: And I believe it was October, before  
7 this case transferred here, that the debtors -- I should say  
8 the trustee -- the prior trustee, Ron Satija, directed his  
9 proposed counsel to remove two surrogate-court matters to the  
10 Southern District of New York. The intention was -- and that  
11 was based on the bankruptcy removal statute, Your Honor. The  
12 intention was to transfer those two matters, because they dealt  
13 with property of the estate and claims-administration issues,  
14 to the court in Texas. Before that happened, the bankruptcy  
15 court in Texas transferred the bankruptcy case here to the  
16 Southern District of New York.

17 So those two matters that had been removed were  
18 sitting before Judge Hellerstein. And in February I spoke  
19 to -- and those are matters that are being handled by the Orly  
20 Genger trustee on behalf of the parties there on that one end.  
21 And obviously, to the extent it deals with Orly Genger, the  
22 bankruptcy trustee is the party with proper standing.

23 So we worked together to coordinate with Judge  
24 Hellerstein, entered into a joint stipulation that refers those  
25 matters here to the bankruptcy court, under the standing order.

1 It was just sitting there. I think normally we would remove  
2 things straight to the bankruptcy court. Because of the  
3 procedural posture here, they were not able to remove it to the  
4 bankruptcy court, because that bankruptcy court wasn't pending  
5 in the same state.

6 So those matters are actually, I believe -- I think  
7 I'd have to maybe speak to Mr. Jenna (ph.), the clerk of the  
8 court, unless Your Honor has a different suggestion, to  
9 coordinate with the district court, because there has been an  
10 order entered, referring those matters here, but they have not  
11 yet hit the docket, Your Honor.

12 THE COURT: All right. Okay, so we can look into  
13 that.

14 MR. CAVALIERE: Okay. Then --

15 THE COURT: And when -- do you know -- do you know --  
16 excuse me. Do you know when the order was issued by Judge  
17 Hellerstein?

18 MR. CAVALIERE: I didn't hear you, Your Honor. I'm  
19 sorry.

20 THE COURT: I'm sorry. Do you know when the order  
21 sending up the cases was entered by Judge Hellerstein?

22 MR. CAVALIERE: Yes. It was -- there's a stipulation  
23 and order; it was signed on February 18th.

24 THE COURT: Oh, all right. So it's very recent.

25 MR. CAVALIERE: Yes, Your Honor.

1 THE COURT: Okay. All right, we'll look into that.

2 MR. CAVALIERE: Okay. So --

3 THE COURT: So, wait. On the surrogate matters, these  
4 were matters that are -- that had been pending in the New York  
5 State Surrogate's Court?

6 MR. CAVALIERE: That is correct, Your Honor.

7 THE COURT: All right. And who -- what did it  
8 involve? Or what do they involve?

9 MR. CAVALIERE: Your Honor, they involve a number  
10 of -- a number of matters. In one instance, it is -- there's a  
11 pending petition, I believe, to remove Dalia Genger as the  
12 trustee. There are also breach-of-fiduciary-duty claims that  
13 have been asserted by Orly Genger against the mother, Dalia  
14 Genger. There are potential cross-claims filed by the other  
15 side against the debtors, which have an impact on objections to  
16 claims.

17 And in addition, one of the surrogate-court matters  
18 addresses an application by Dalia Genger against various  
19 parties, including the litigation funder, Mr. Gartman's client,  
20 as well as the current owner of TRI Resources (sic), The Trump  
21 Group. They're not affiliated with the president, Your Honor,  
22 but had purchased the shares of TRI Resources.

23 There is -- as you may have seen from the documents --  
24 and I'll certainly provide more color to this if Your Honor is  
25 not aware -- there's a possibility that the debtor may be



1 entitled to some proceeds of a note, as a result of that 32.3-  
2 million-dollar settlement that was in the papers. And there  
3 was an application by Dalia Genger to essentially enjoin The  
4 Trump Group from making payment to the payees in that  
5 litigation.

6 So that's all pending in the surrogate court. As I  
7 understand it, some of these things could have been presented  
8 in state court elsewhere, but they did find their way in the  
9 surrogate court.

10 THE COURT: All right, what's the surrogate -- what  
11 was the basis -- just forgive me; I'm not that familiar with  
12 the scope of the Surrogate's Court jurisdiction. But how did  
13 it end up -- this is a dispute over somebody's will? How did  
14 it end up in the Surrogate's Court? And I'll hear from anyone  
15 who has a quick answer to that.

16 MR. CAVALIERE: Sure. I'll give you my view of it.  
17 And certainly the parties that have been involved in this  
18 litigation -- the surrogate-court matter started in 2009 --  
19 certainly correct anything I've said about what's pending  
20 there. But the reason why it ended up in surrogate court's  
21 because the dispute, at least initially, centered on the  
22 breaches of fiduciary duty by -- or actions by and between  
23 beneficiaries of a trust, the Orly Genger Trust. And that's  
24 why it ended up in surrogate court initially.

25 THE COURT: Okay. All right, thank you. I didn't

1 mean to interrupt you, but you were summarizing the various  
2 matters.

3 MR. CAVALIERE: Okay. Yes. And I think Mr. Pollock  
4 is here on behalf of the Orly Genger Trust, and perhaps he can  
5 provide a little more color as to those surrogate-court  
6 proceedings, to amplify --

7 THE COURT: All right.

8 MR. CAVALIERE: -- the record.

9 THE COURT: That'd be great.

10 Mr. Pollock?

11 MR. POLLOCK: Good morning, Your Honor. We represent  
12 the Orly Genger Trust. We were not --

13 THE COURT: And I'm sorry, Mr. Pollock -- I'm sorry --  
14 Mr. Pollock, I'm sorry to interrupt you. Just because -- to  
15 make sure that, when we get the transcript of this, it's clear  
16 who's speaking, just note your appearance before you start to  
17 speak, please.

18 MR. POLLOCK: Absolutely. Thank you, Your Honor.  
19 Adam Pollock on --

20 THE COURT: Thank you.

21 MR. POLLOCK: -- behalf of the Orly Genger Trust. We  
22 represent the --

23 THE COURT: Thank you.

24 MR. POLLOCK: We represent the successor trustee and,  
25 frankly, we're successor counsel.

1           So I don't have the full picture of the origin of  
2 those cases in the Surrogate's Court, but my understanding is  
3 that the Surrogate's Court jurisdiction includes not just  
4 decedents but also trusts in estate matters. So that would  
5 explain why they started there.

6           We have consented to the referral of those matters to  
7 the bankruptcy court to hear our pending remand motions,  
8 because we think that these are basically core Surrogate's  
9 Court -- Surrogate's Court matters and core Surrogate's Court  
10 jurisdiction. And there's the probate exception to federal-  
11 court jurisdiction. That said, I don't think we need to  
12 completely address them today. We have our pending motions  
13 and, if necessary, we can get into the motion practice on that.  
14 The trustee hasn't yet responded to those pending motions.

15           THE COURT: All right. Thank you.

16           MR. CAVALIERE: Your Honor, since we're talking about  
17 other pending cases, if you just -- if you want to go through  
18 the other --

19           THE COURT: Yes --

20           MR. CAVALIERE: -- matters, we can do that.

21           THE COURT: Yeah, excuse me, Mr. Cavaliere?

22           MR. CAVALIERE: Yes.

23           THE COURT: Okay, note that, please.

24           UNIDENTIFIED SPEAKER: Your name.

25           UNIDENTIFIED SPEAKER: Name.

1 MR. CAVALIERE: Oh. I apologize. Rocco Cavaliere,  
2 Tarter Krinsky, on behalf of the trustee.

3 THE COURT: Thank you.

4 MR. CAVALIERE: My apologies.

5 Your Honor, there's also three pending discharge  
6 actions that were filed in this court. I believe that there's  
7 pre-trial conferences scheduled in those, commenced by Dalia  
8 Genger, the mother; Sagi Genger, the brother; and Orly Genger,  
9 trustee, not Deborah Piazza but Mr. Pollock's client.

10 THE COURT: All right, and these -- I'm sorry to  
11 interrupt you. These are actions that were commenced after the  
12 cases came to New York?

13 MR. CAVALIERE: The actions actually started -- I  
14 believe they were commenced in October, before the transfer  
15 took place. The transfer order in Texas was signed in  
16 November, and it took a month, from November 5th till about  
17 December 11th, before they arrived here in the Southern  
18 District. And Deborah Piazza was appointed at that time as a  
19 successor trustee.

20 THE COURT: All right, and what are the -- what are  
21 the dates of our pre-trial conferences?

22 MR. CAVALIERE: Your Honor, I believe -- and I'm not  
23 involved in those. The trustee did not bring those actions.  
24 But I do know that the status conferences -- or pre-trial  
25 conferences in those actions is April 7th. I'm not aware --

1 the debtor's counsel is here; it's defending those actions. I  
2 don't know whether service has been done. And other parties  
3 can speak to that.

4 THE COURT: Okay. All right.

5 MR. CAVALIERE: My hope, Your Honor, just because  
6 there are issues that -- factual issues that arise in those  
7 actions, that could implicate other matters in this case as we  
8 try to maximize value, that the parties would agree to push  
9 those discharge actions out, with the Court's permission, while  
10 we focus on other things.

11 THE COURT: All right.

12 MR. CAVALIERE: Okay? And others, obviously, can jump  
13 in and speak as to that at the appropriate time.

14 There's also separately an action commenced by Dalia  
15 Genger, the mother, against Orly Genger, the debtor; Michael  
16 Bowen, who is a partner at Kasowitz, a partner of Mr.  
17 Herschmann, the debtor's husband; Arie Genger; Arnold Broser;  
18 David Broser; Eric Herschmann; The Genger Litigation Trust;  
19 ADBG; TEDCO; and Deborah Piazza; seeking to impose a  
20 constructive trust on the 32.3-million-dollar proceeds from  
21 that settlement reached between -- back in -- I think it was  
22 June 2013.

23 THE COURT: All right.

24 MR. CAVALIERE: And as far as I know, I don't believe  
25 we've been served. And I was told, at least initially, by

1 counsel in this case, not Dalia Genger's counsel but another  
2 counsel, that it was simply filed to preserve a statute-of-  
3 limitations potential issue and that the parties -- the hope  
4 was that the plaintiff would allow that to remain stagnant  
5 while the trustee continues the administration of the case.  
6 Mr. Tokayer's here, can speak to that if you'd like.

7 THE COURT: Okay. All right.

8 MR. CAVALIERE: Okay, he's -- I guess, presumably he  
9 doesn't want to speak to it.

10 MR. TOKAYER: I think everybody's just figuring -- you  
11 do yours and then everybody --

12 MR. CAVALIERE: Okay. So I think that --

13 THE COURT: Yeah.

14 MR. CAVALIERE: -- what the parties have decided -- it  
15 just makes sense for me to complete my presentation, and  
16 everyone will speak thereafter.

17 THE COURT: I think that's fine. So we just -- just  
18 to recap; so far we have two surrogate matters, the three  
19 discharge cases, the -- I'll call it the constructive-trust  
20 action. Right?

21 MR. CAVALIERE: Yes.

22 THE COURT: I haven't missed anything. Okay. So  
23 we'll keep moving.

24 MR. CAVALIERE: The next one -- there's an adversary  
25 proceeding -- again I'm not involved in this -- Kasowitz v.

1 Sagi Genger. This relates to a motion to quash a subpoena;  
2 believe a subpoena that was served during the bankruptcy case  
3 before it got to New York. And I'm not sure whether -- I don't  
4 believe that that's been resolved. I think it's just sitting  
5 there for further -- to the extent it needs to be addressed in  
6 the future.

7 THE COURT: All right.

8 MR. CAVALIERE: There's also, Your Honor, just -- and  
9 I haven't really studied these cases. I have spoken to  
10 Kasowitz about them. There are two Supreme Court cases that I  
11 believe both of them are before Judge Barbara Jaffe#, relating  
12 to affirmative claims that Orly Genger has against, in one  
13 case, Sagi Genger, and another case against Dalia Genger. In  
14 those cases -- the second case against Dalia Genger, Sagi  
15 Genger, D&K, and TPR. They deal with fraudulent-inducement  
16 claims, they deal with breach-of-fiduciary-duty claims, and  
17 fraud claims. Those cases -- some of them -- I believe the  
18 claims for some of them are pending; some may be on appeal.  
19 But these are cases in which Orly Genger is the plaintiff. And  
20 I believe they're just kind of pending. And the trustee has  
21 not yet decided how to proceed with respect to those.

22 I think, frankly, Your Honor, part of the issue  
23 here -- this has been a fifteen-year saga. This Genger family  
24 litigation has taken up the courts' times (sic), and we think  
25 it's about two or three dozen courts over the course of the

1 last fifteen years. It may be more than that, frankly. So  
2 there's litigation everywhere. And we're hoping -- the fact  
3 that we haven't focused on that -- we will focus on it, but  
4 we've been trying to focus on some other things in the case,  
5 including -- I get to it -- the Broser money; that's the  
6 settlement proceeds that is at play here, the alleged  
7 fraudulent transfer of the thirty-two million dollars. That's  
8 been our initial focus.

9 But we will look into these cases a bit later. We  
10 have two years to do so, but we're not waiting that long. But  
11 we just haven't had a chance to really study these cases,  
12 although we've had some initial discussions with debtor's prior  
13 counsel.

14 THE COURT: Okay.

15 MR. CAVALIERE: So, Your Honor, there's also another  
16 case that's now before -- it's Magistrate Freeman, but it's --  
17 Judge Vyskocil has the case -- just recently assigned -- that  
18 may have an impact on our case. The debtor is not a party to  
19 it, but the claims asserted therein may have an impact on our  
20 bankruptcy estate. The name of that case is Manhattan Safety  
21 Maine, Inc. v. --

22 THE COURT: Manhattan what? I'm sorry?

23 MR. CAVALIERE: Manhattan Safety --

24 THE COURT: Okay.

25 MR. CAVALIERE: -- Maine -- spelled M-A-I-N-E -- Inc.



1 v. Michael Bowen, Arie Genger, the two Brosers, The Genger  
2 Litigation Trust, ABDG, and TEDCO. And that's an action  
3 brought by an assignee of the Orly Genger Trust, who is --  
4 Manhattan Safety Maines is an alleged creditor of the Orly  
5 Genger Trust and is prosecuting these various parties to  
6 recover the 2013 settlement proceeds against these parties.

7 This action potentially implicates the automatic stay.  
8 Worked with Mr. Pollock, who is lead counsel to Manhattan  
9 Safety Maine. He's also lead counsel to the Orly Genger  
10 trustee, so represents two separate parties: the main creditor  
11 of the Orly Genger Trust -- or the alleged creditor, I should  
12 say, and also the Orly Genger trustee. And he has been --  
13 agreed to an interim stay every forty-five days. We've agreed  
14 to push that out until March 30th. Nothing will happen in that  
15 case until we have a determination on how to proceed in our  
16 bankruptcy case, because the Brosers and Arie Genger, who are  
17 the parties that are alleged to have received the bulk of the  
18 thirty-two million dollars -- and let me say to break --  
19 seventeen million of the thirty-two million was allegedly  
20 received by those parties, in which case they may be pursued as  
21 far as reconveyances. There's a question as to whether those  
22 are monies that belong to the property -- that is property of  
23 the estate under the bankruptcy case, or whether those are --  
24 that's property of the trust.

25 And separate and apart from that, there's a fifteen-

1 million-dollar note due from The Trump Group, that is also --  
2 there's a question as to whether that should go to the  
3 bankruptcy estate or to the Orly Genger Trust. And there's  
4 allegations that perhaps it should go to The Genger Litigation  
5 Trust, which is a separate entity that Arie Genger and the  
6 Brosers and Orly Genger were part of.

7 So, obviously there's a dispute with respect to  
8 ownership of these claims, and there's a basis by which that  
9 should remain stayed. And I don't anticipate any issue with  
10 Mr. Pollock continuing to stay that perhaps for a longer period  
11 of time as opposed to doing it every forty-five days. But I  
12 can discuss that with him after the hearing.

13 THE COURT: All right. Thank you.

14 MR. CAVALIERE: Your Honor, I believe that's  
15 essentially where -- as far as pending actions. There is -- I  
16 believe the other actions are stayed. There's an action before  
17 Judge -- it was previously Judge Forrest; it's now Judge  
18 Broderick. It's Dalia Genger v. Sagi Genger, v. Orly Genger.  
19 This was the case that led to the judgment by (sic) Sagi Genger  
20 in 2018, which was confirmed by -- which was affirmed by the  
21 Second Circuit in June, I believe, of 2019, and led to the  
22 filing of the bankruptcy case. He obtained a judgment for 3.5  
23 million dollars, arising from an indemnity obligation of Debtor  
24 Orly Genger. This related to an agreement between Dalia Genger  
25 and Sagi Genger that, when shares of the family enterprise, TRI

1 Enterprises (sic), were contributed to both the Orly Genger  
2 Trust and to the Sagi Genger Trust in 2004 when Dalia and Arie  
3 got divorced, as part of that divorce proceeding, there was a  
4 separate agreement that, in light of the fight that Dalia, the  
5 wife, who's allowing these contributions to take place to the  
6 son and the daughter -- that the separate agreement was reached  
7 that, when she needed money and when she made a demand for  
8 money, if these shares ever were liquidated -- that initially  
9 Sagi would have to pay directly, and then Orly would have to  
10 indemnify Sagi for half of the amounts demanded by the mother.  
11 Judge Forrest determined that was a valid obligation and,  
12 thereafter, after exhausting all appeal rights, the debtor  
13 determined that it was appropriate to file for bankruptcy in  
14 July of 2019.

15           So that matter is stayed. I don't think that that's  
16 moving forward. I don't believe it's closed but I do believe  
17 it's stayed. And a separate action commenced by Sagi Genger  
18 against the Brosers, The Genger Litigation Trust, and ADBG  
19 also -- a separate action, so -- to pursue the 17.3 million  
20 dollars, was brought by Mr. Sagi Genger, I guess in his  
21 capacity as judgment creditor of the debtor. They're covering  
22 all their bases here, Your Honor.

23           Manhattan Safety Maine has got the -- was pursuing  
24 them for fraudulent transfers. So to the extent it was the  
25 Orly Genger Trust cause of action, then Sagi Genger was pursuing

1 these people. This turned to be an Orly matter -- an Orly  
2 action. Obviously, because the case was filed, the trustee is  
3 now the party with proper standing to pursue those rights  
4 against the Brosers, also known as the -- who own that entity,  
5 ABDG, that Mr. Gartman represents.

6 THE COURT: Okay.

7 MR. CAVALIERE: Okay. So that's what -- I believe  
8 I've covered, I think, everything. All the pending cases I --  
9 obviously, if I missed one or two, Mr. Dellaportas, who's here  
10 on behalf of Sagi Genger, who's been involved in this  
11 litigation for over eleven or twelve years, can -- and Kasowitz  
12 is also here. They can supplement the record in that regard.

13 THE COURT: All right.

14 MR. CAVALIERE: Okay.

15 THE COURT: So just so that -- just so that you and I  
16 are clear; I think I count twelve actions: the two surrogate;  
17 the three pending discharge actions; the -- what I'm referring  
18 to as "constructive-trust action"; the Kasowitz cross to the  
19 subpoena action; two actions in the New York State Supreme  
20 Court; one in the district court, in front of Judge Vyskocil;  
21 and then two that are in the district court, brought by Sagi.  
22 Is that right?

23 MR. CAVALIERE: Yes, that's correct, Your Honor. And  
24 as you were speaking, something brought to my attention another  
25 one that I was aware of and I forgot to mention.

1 THE COURT: Okay.

2 MR. CAVALIERE: There was -- there's another action  
3 before Judge Broderick, commenced by Recovery Effort, Inc.,  
4 which is, as I understand it, an entity that is owned by the  
5 Orly Genger Trust. It was an entity that was formed in 2019.  
6 And they're bringing an action, a malpractice and breach of  
7 fiduciary duty and aiding and abetting, breach-of-fiduciary-  
8 duty action against the prior law firms of the debtor.  
9 Zeichner Ellman & Krause is one of those firms, and another  
10 firm is Wachtel Missry. And these are the firms that  
11 represented the debtor, Orly Genger, in connection with that  
12 2013 settlement that's been very -- is very controversial here  
13 and may be one of the bigger recoveries in this case, unless  
14 Your Honor were to determine that didn't belong to the debtor  
15 and it belonged to the Orly Genger Trust.

16 So that action is proceeding. I believe there was a  
17 complaint filed against those firms. They filed motions to  
18 dismiss. And Recovery Effort, Inc. filed an amended complaint;  
19 I believe on February 20th or thereabouts. I had some initial  
20 discussions with counsel to the Orly Genger Trust -- that's Mr.  
21 Pollock -- and indicating I had some concern that potentially  
22 this could be a violation of the stay insofar as it could be  
23 determined that the alleged malpractice -- which we have not  
24 investigated at all to determine whether they've committed any  
25 malpractice, by the way, but to the extent that that is also a

1 potential recovery for the estate. I haven't yet made a  
2 determination. I haven't talked to the trustee about that,  
3 frankly, yet. And that is something that's tabled right now,  
4 as far as -- what I mean, that those discussions with Mr.  
5 Pollock have been tabled for the time being. We're going to  
6 see where things go from here today.

7 And they've heard me out as to my concerns, and  
8 that -- we'll either go forward or perhaps be stayed. And if I  
9 really feel strongly about it, perhaps I'll come to the Court  
10 and ask for the Court to intervene, and raise my objections  
11 formally. But I'm hoping that that will be addressed to our  
12 satisfaction with some cordial discussions. I've had some --  
13 so far, I've been working well with the counsel, Mr. Pollock,  
14 so I anticipate and hope that that will continue, going  
15 forward.

16 THE COURT: All right. Now, one of the things I would  
17 like and I'd ask all of you work together on is putting  
18 together for me -- it can be in chart form or it could just be  
19 a summary, just -- a description of all of these actions. And  
20 I don't need it detailed. It could be really just walking  
21 through the surrogate-court actions, you know, who the parties  
22 are, and what the status is, and to go through and identify  
23 each of the discharge actions, et cetera. Is that something  
24 that you folks think you can put together for me?

25 MR. CAVALIERE: Oh, absolutely, Your Honor. I'll

1 take -- as trustee's counsel, I'll take the first stab at it,  
2 and then I'll circulate it to the parties to correct it. I'm  
3 sure there'll be some revisions. Again, I'm new to the case,  
4 but -- and we'll get that over to the Court. Does Your Honor  
5 have a view as to when Your Honor would like to see this chart?

6 THE COURT: I don't. There's no rush to it. Just,  
7 you know, to -- we're going to now figure out, after I hear  
8 from everyone, how we're -- when we're next going to get  
9 together and what we hope to achieve. So we can trigger it off  
10 of that.

11 MR. CAVALIERE: Fair --

12 THE COURT: So --

13 MR. CAVALIERE: Okay. Fair --

14 THE COURT: All right? So -- now, I know there're a  
15 lot of you who probably wish to be heard. Does anyone object  
16 if I just go through the -- does it make sense for me to just  
17 walk through it -- just ask the parties in the order that  
18 people noted their appearances, or is there a better way to do  
19 it?

20 MR. CAVALIERE: Your Honor, it's Rocco Cavaliere  
21 again. I'm happy to proceed however you'd like. If I can  
22 just -- I think -- initially you had asked where we are.  
23 Before we turn the --

24 THE COURT: Oh, yes.

25 MR. CAVALIERE: -- turn the podium over to others, I'd

1 like to just give you a little summary of what we've done so  
2 far -- Tarter Krinsky -- to try to administer this case. It'll  
3 be a short presentation. And --

4 THE COURT: No, no, no, that -- I apologize. I  
5 thought you were done. So I apologize. No, please go right  
6 ahead.

7 MR. CAVALIERE: Okay. So, Your Honor --

8 THE COURT: Take as much -- take as much time as you  
9 need.

10 MR. CAVALIERE: Okay. Thank you very much, Your  
11 Honor.

12 So, Your Honor, this is -- a trustee's been appointed  
13 in hundreds of thousands of cases over the years. You've been  
14 on the panel for, I -- dozen years. And I don't think we've  
15 ever seen a case like this before. This is a litigation that's  
16 been spanning for over fifteen years. And if some parties have  
17 their way, they'll continue litigation for five to ten more  
18 years.

19 Fortunately, we're at -- with the filing of the  
20 bankruptcy, we have a uniform -- we have one court that can  
21 perhaps end this nightmare of litigation. And I'm sure state-  
22 court judges and district-court judges are -- well, I don't  
23 know this for sure -- have been rejoicing about the fact that  
24 they haven't had to deal with too many Genger litigation  
25 matters since July, since the bankruptcy filing.



1           Within a few days of the appointment of Ms. Piazza, we  
2 started rolling up our sleeves and we started looking at these  
3 cases, at this bankruptcy case as well as the other state-court  
4 and federal-court cases that are pending, as well as those that  
5 have concluded, that may give rise to information that'd be  
6 helpful in the administration of the case.

7           We had calls, right from the start, with the major  
8 parties-in-interest, with Sagi Genger's counsel, with the  
9 Brosers, with Arie Genger's counsel. And then we met with most  
10 of the parties, most of whom we met with in January. And I met  
11 with some other folks in February; I met with Mr. Herschmann  
12 after he completed his impeachment work for the president in  
13 January. Had an opportunity to meet with me in February.

14           One of the matters that we had to focus on, Your  
15 Honor, was the settlement that was reached by the trustee in  
16 this bankruptcy case before it was transferred. Judge Davis  
17 transferred the case and did not rule on the settlement motion.  
18 But there are several objections on file, which we took quite  
19 seriously.

20           So our intent, and as we said to all the parties right  
21 from the start, is -- it's going to take us a little time to  
22 get up to speed, in light of the history of this case, but that  
23 we believed that there was going to be a need to improve the  
24 settlement consideration that was reached by the prior trustee.

25           And so we've -- essentially from mid-December to early

1 February, while we met with some parties, most of our work was  
2 really to do homework, to understand the positions. And we  
3 didn't really start the negotiations with the parties to  
4 improve the settlement, until early to mid-February.

5 And just by way of background; the settlement terms,  
6 Your Honor -- we're dealing with two -- there's three, four  
7 aspects to it that we were trying to improve. And I'll just go  
8 over what the prior trustee's settlement was and -- so they  
9 understand what those terms were. And obviously, I can't get  
10 into what the current posture is, but I have reported to the  
11 parties that -- to the Sagi Genger team, that we are making  
12 process and we're hopeful that within a few more weeks we'll  
13 have potentially a much-improved settlement that I'd like to be  
14 able to present to the Court at the next conference date,  
15 perhaps April 7th, which is the date that we have for the pre-  
16 trial conferences on these matters.

17 But the settlement that was reached by the prior  
18 trustee was in connection with the fraudulent transfer against  
19 the Brosers, a 1,000,000-dollar settlement, of which 250,000  
20 dollars would be paid within ten days of approval of a  
21 settlement, and another 750,000 dollars to be paid when the  
22 Brosers, or ADBG, the entity, was to receive 750,000 dollars  
23 from the proceeds of the Trump note. So there's this Trump  
24 note that is -- in the face of it, there're two notes -- 7.5  
25 million each -- in total, of 15 million, that's still due to be

1 paid by The Trump Group.

2 The settlement agreement, 2013, provided that The  
3 Trump Group did not have to make payment until the Sagi Genger  
4 group -- which is defined to include Dalia, the mother; Sagi,  
5 the brother; the trustees of the various trusts. They had to  
6 provide the leases to The Trump Group, because The Trump Group  
7 was involved in all these other litigations, but, for The Trump  
8 Group, would agree to pay any of this money to the settling  
9 parties: the Brosers, Arie Genger, and Orly Genger.

10 And so that money's been held up. And in the  
11 meantime, while litigation's continued, Orly Genger provided --  
12 agreed to secured claims and the filing of UCCs by the Brosers,  
13 of about 4.5 million dollars. And then Eric Herschmann, who's  
14 also a secured creditor for two million, to the extent that any  
15 of those Trump monies come in, he theoretically has a right to  
16 recover that. And then separately, Arie Genger, third in line  
17 because there's an intercreditor agreement between these three  
18 parties, asserted (ph.) a couple 5.4 million. And that will  
19 leave three million left. But, Your Honor, Trump Group, which  
20 is represented by Skadden -- they know what they're doing when  
21 they draft settlement agreements, and they preserved themselves  
22 an indemnification obligation under the settlement agreement,  
23 which gave them the ability to offset any other legal fees  
24 that're incurred from that point forward. And they have  
25 incurred three million dollars in legal fees.

1           So in some respects, this is a draining asset.  
2       There's still a lot of money left. But there are still some  
3       pending actions against The Trump Group they're defending and  
4       trying -- and have pending motions to dismiss on. So that's  
5       money that ultimately we're hoping comes in; we don't know when  
6       it will but, when it does, in connection with that 1-million-  
7       dollar settlement I was speaking about, the Brosers, to the  
8       extent that their lien is valid, would then -- if they were to  
9       receive the 4.5 million dollars that they claim to be entitled  
10      to, 750,000 of that would be paid to the estate.

11           In addition, the debtor's husband, Eric Herschmann,  
12      had, in 2012, 2013 (ph.), purchased a condo in Texas. Was his  
13      homestead. It's where his adult children live, as well. He  
14      met the debtor, I think, around -- shortly thereafter. And  
15      they married in 2016; September 2016. At or around the time of  
16      the marriage, I guess what all good husbands do -- in  
17      hindsight, perhaps he shouldn't have done it -- he contributed  
18      one-half of his interest in his home to the debtor. So the  
19      debtor has a one-half interest in this condo, the value of  
20      which is anywhere between -- obviously the Sagi Genger side  
21      says about 3.5 million. Mr. Herschmann believes it's worth 2.4  
22      to 2.5. The trustee is analyzing it.

23           But at the time that the gift was provided to the  
24      debtor from the husband, he did preserve for himself four  
25      parking spots and storage units. So the value to the estate is

1 reduced by virtue of the fact that the debtor doesn't have an  
2 ownership right in those parking spots and garage and storage  
3 units, who are, as I understand it, quite valuable.

4           So we are working with Mr. Herschmann, as well, to  
5 improve the consideration that he agreed to provide, and what  
6 he agreed to provide to the prior trustee was 200,000 in cash.  
7 In addition -- and it was all a fully integrated settlement  
8 agreement. Because he believes he has a right to a lien on  
9 that money that would come in from the Brosers -- from the  
10 Trump monies, he agreed that any monies that the Brosers  
11 provide to the estate -- that's about a million dollars -- plus  
12 the 200,000 he was contributing -- he has a lien on all  
13 litigation proceeds of the debtor, but he would waive his right  
14 to a preference and priority on that money so that it could be  
15 available for the estate and in the order of priority under the  
16 Bankruptcy Code.

17           Another aspect of that agreement, which is one of the  
18 more controversial aspects of it, was the settlement agreement;  
19 controversial insofar as Sagi Genger team raised a number of  
20 issues. Kasowitz Benson, which is debtor's former counsel, in  
21 which Mr. Herschmann's a partner, had agreed to represent the  
22 prior trustee on a contingency basis at thirty-three percent,  
23 to pursue potential claims against Sagi, the brother; and  
24 Dalia, the mother. And those two -- I believe they would  
25 continue in those two state-court matters I spoke of earlier.

1 And there were fierce objections to those -- to that aspect of  
2 the settlement. And in addition, there were -- there's a  
3 separate retention application that was on file, in (sic) which  
4 there were objections. And that never got decided by Judge  
5 Davis.

6 So those are the aspects that -- so what we'll be  
7 doing, Your Honor, is going back to the parties, because we  
8 have potential targets here that have reached a settlement with  
9 the prior trustee. And we respect the process. While the  
10 prior trustee's settlement was viewed as objectionable by some  
11 creditors, there was a lot of time and effort put into that.  
12 And we believe that the first step is to try to improve it if  
13 we could. And that's what we've been focusing on to try to  
14 improve that settlement. Whether the current structure will  
15 remain in place or whether some portion of it would be removed,  
16 that remains to be seen. But we are making some progress. We  
17 have actually made some significant progress.

18 Another aspect of our settlement that was  
19 controversial was Arie Genger was to keep his secured claim.  
20 We're also discussing Arie Genger's consideration, if any, with  
21 respect to an improved settlement.

22 So we are -- certainly we believe we're making some  
23 progress here. And what I've asked the parties to do is to  
24 allow the trustee, who has two years, really, to bring actions  
25 and to do an investigation, to stay any litigation efforts, any

1 contested matters, to allow the trustee to do the job that  
2 she's entitled to do as a trustee, to maximize value for all  
3 parties. And for most (indiscernible) I've been getting  
4 cooperation, but unfortunately yesterday there was an  
5 expectation, apparently, by Sagi Genger that we would have a  
6 fully baked and resolved settlement by today. That was  
7 certainly our intention. We tried to do so. But there're just  
8 many moving parts, and I think, in light -- and as, frankly,  
9 evidence of arm's-length negotiations that we're having with  
10 the other side. We haven't gotten there yet, but we're making  
11 progress.

12 And as you know, Your Honor, the case was transferred  
13 here because Sagi Genger, the brother, filed a motion to  
14 dismiss or, in the alternative, to transfer venue. Judge Davis  
15 decided he would not dismiss the case, and he accepted that  
16 alternative relief -- granted that alternative relief of  
17 transfer. I think, on the face of the motion to dismiss, it  
18 was -- it was styled "motion to dismiss or grant" -- "transfer  
19 venue". They got their relief. Judge Davis did say that he'll  
20 let Your Honor decide on dismissal and when that should take  
21 place.

22 And I'm told that they would like to try to get -- and  
23 they'll speak for themselves -- seek from the Court the right  
24 to schedule a hearing on a motion to dismiss. And in that  
25 regard, Your Honor, they've already taken upon themselves,

1 hoping that Your Honor agrees to schedule a motion to dismiss,  
2 to send nine subpoenas out to nine different firms, which is  
3 frankly another example of the litigation tactics that have  
4 been going on for fifteen years but we, frankly, don't need in  
5 this case.

6           Trustee's moving quickly and doing her job. And we're  
7 hoping that the Court -- and I'll certainly be heard later  
8 after the parties speak to this -- and hope that the Court  
9 delay any hearing for a considerable period of time on the  
10 motion to dismiss, to allow us to do our work; would put  
11 back -- perhaps with any luck, we reach a settlement that is  
12 very favorable and everyone is okay with. And to the extent  
13 that it's a settlement that the parties are not in favor of,  
14 they'll have their rights, under the law, to object to  
15 settlements. But to use a motion to dismiss as a litigation  
16 tactic, to try to hold it over the trustee's head, is simply  
17 not going to work, and it's going to have an actual deleterious  
18 effect on this estate, which may give rise to certain actions  
19 the trustee may need to take.

20           So we're hoping that we can calm the waters and  
21 continue to keep it calm while we continue the administration  
22 of the estate. And we're hoping that, if Your Honor allows, we  
23 can come back on April 7th and we can, during this next month,  
24 focus all of our efforts and energies on improving that  
25 settlement, presenting to the Court what those settlement terms



1 are, and then scheduling, hopefully, a hearing on the  
2 settlement motion, some time thereafter. Thank you, Your  
3 Honor.

4 THE COURT: All right. Thank you. Now, what I would  
5 like to do -- so I'd like to hear briefly from each of the  
6 parties -- because what I think the way I want to proceed here  
7 is to adjourn this -- after I've heard from you, of course, is  
8 to adjourn this until the 7th. What I'll ask for is, prior to  
9 that, two weeks ahead of time, that I get submissions -- we can  
10 call them status; we can figure out how to style it. But it  
11 basically -- from my perspective, it's being heard from the  
12 parties telling me what it is they would like to do, and what  
13 they think as far as moving forward is concerned.

14 I'm happy to hear about it briefly right now, but I  
15 would like to have that so that I have a sense for what the  
16 thinking is as it relates to the thirteen -- or as many of the  
17 thirteen actions as we can address.

18 Now, having said that, I just repeat my question, is:  
19 does it make sense to move forward just along the order of the  
20 folks who have appeared on this? Is that -- does anyone object  
21 to proceeding that way?

22 MR. CAVALIERE: I think that's fine, as long as people  
23 can remember what order they were in when they made their  
24 appearances. But that's fine with --

25 THE COURT: Well, I wrote it --

ORLY GENDER

41

1 MR. CAVALIERE: -- I think, everyone.

2 THE COURT: -- I wrote it -- I wrote it down, so I'll  
3 just call on people.

4 MR. CAVALIERE: Okay. Fantastic, Your Honor. Thank  
5 you.

6 THE COURT: All right, Mr. Pitta?

7 MR. PITTA: Good morning, Your Honor. Thomas Pitta of  
8 Emmet, Marvin & Martin, on behalf of Sagi Genger and TPR  
9 Investments.

10 THE COURT: I'm sorry I mispronounced your name. I  
11 apologize.

12 MR. PITTA: I'm sorry. It's Thomas Pitta, P-I-T-T-A.

13 THE COURT: Yeah. Sorry about that.

14 MR. PITTA: Okay. That's fine.

15 THE COURT: Go ahead.

16 MR. PITTA: So, Your Honor, we do wish to proceed with  
17 our motion to dismiss at this point. And there's a few things  
18 that I want to just point out that I think are just kind of  
19 misunderstandings or just wrong. The trustee's counsel talked  
20 about fifteen years of litigation. And while there has been  
21 fifteen years of litigation here, that's not really what's  
22 relevant here at this point.

23 This case was filed in the summer of last year, on the  
24 eve of the parties who are the transferees of the debtor's  
25 assets, having to respond to the turnover motion that we'd

1 filed in the district court before Judge Broderick. And that's  
2 really the only litigation that matters here, because that  
3 litigation decides what happens to the thirty-two million  
4 dollars that we believe came into Orly Genger's estate when the  
5 2013 settlement happened and that were fraudulently transferred  
6 out of her estate. And if we're right about that litigation  
7 and Judge Broderick decides that some or all of that thirty-two  
8 million dollars should come back into this estate, then we  
9 clearly don't need a bankruptcy. This debtor has enough  
10 resources to pay all of her creditors, legitimate or otherwise.

11 And so that litigation really decides just about  
12 everything that needs to be decided here. And so the reason we  
13 believe that the motion to dismiss is appropriate is because it  
14 allows us to go back to Judge Broderick and have that case  
15 decided and allow this to actually finally come to a  
16 conclusion.

17 And so we believe that a motion to dismiss is the  
18 appropriate thing here. And we brought the motion to dismiss  
19 in the Austin court, together with the motion to transfer  
20 venue, prior to the trustee in Austin entering into any  
21 settlement with the debtor and her father and the Brosers and  
22 whatnot. And we brought it because we believed before that  
23 settlement was reached, and we believed before this case was  
24 transferred to the Southern District, that the most efficient  
25 method of bringing this saga to a conclusion is to allow Judge

1 Broderick to decide the turnover motion that was pending before  
2 her (sic) before this bankruptcy case was filed.

3 And what we want to point out to Your Honor is that  
4 this case was filed -- unlike almost any bankruptcy case I've  
5 seen in my twenty years, this case was filed in order to  
6 prevent the recapture, by the debtor's estate, of assets. What  
7 was pending before Judge Broderick and what brought about this  
8 bankruptcy case was an action to recover thirty-two million  
9 dollars plus interest and whatever else, of assets that we  
10 believe properly belong to Orly Genger.

11 And this bankruptcy was brought not because of any  
12 collection efforts by anybody, or anything along those lines.  
13 This bankruptcy case was brought to prevent the -- to prevent  
14 Judge Broderick from eventually having to decide whether this  
15 debtor could get back thirty-two million dollars of assets that  
16 were transferred out of her estate. And so what we believe is  
17 that that is the appropriate litigation to continue.

18 And we appreciate the work the trustee has done here,  
19 and we dug in along with the trustee and we made a proposal to  
20 the trustee that would have kind of resolved many of the issues  
21 in this case, days after the trustee was appointed. And we've  
22 never received a response to that proposal. But we have worked  
23 with the trustee extensively. We provided a number of memos  
24 that provided the trustee with information about the background  
25 of this case and certain parties' claims and defenses, in hopes

1 of trying to enable the trustee to get to a settlement. But  
2 frankly, we did that with a very skeptical mind, because these  
3 parties have been litigating for a long time, they have been  
4 before retired judges and other mediators a number of times  
5 over the years, and have been unable to reach a settlement.

6 I would love to have a settlement here, but we don't  
7 believe that it's actually likely to occur. And if it does  
8 occur, it'll potentially look like the settlement that was  
9 reached in Austin, Texas, which, from the creditors-of-this-  
10 estate's perspective, was an abomination; it was terrible. And  
11 the judge there looked at it and said that -- he described that  
12 settlement as sparsely described and mostly platitudes.

13 There was no -- there was nothing to the settlement.  
14 It was basically, "Give me a few bucks so I can pay my bills,  
15 and we'll all go away." And Sagi Genger and the other parties  
16 that are legitimate creditors of this estate weren't interested  
17 in that. But we don't believe there's a real prospect for a  
18 settlement happening here, because it hasn't# over a decade  
19 now.

20 And so what we believe is that it's time to put this  
21 fraudulent transfer, the turnover-motion action, before Judge  
22 Broderick and let her (sic) decide it. And if we lose, then we  
23 lose and we'll go home and we'll be done with this. But if we  
24 win, then this debtor has more than enough assets to pay all of  
25 her creditors at least once over, but more than that probably.

1           And so while we laud the trustee's interest in trying  
2   to get to a global settlement, we just don't think it's  
3   possible. And we don't want to be just in limbo any longer.  
4   This case was filed in July, like Mr. Cavaliere said, last  
5   summer, on the eve of the response deadline, which Mr. Genger  
6   had adjourned in order to supposedly accommodate lawyers'  
7   vacation schedules, and then, right before their response was  
8   to be filed, instead this bankruptcy was filed. And then we  
9   were stuck in the Texas bankruptcy court for three months. We  
10   got the venue transferred. And it's been almost another three  
11   months that we've been here, and we believe it's time to allow  
12   this litigation to proceed. We would suggest that a hearing  
13   schedule on our motion to dismiss be established.

14           We did serve discovery. And, Your Honor, I want to  
15   make clear, I personally have spoken to Mr. Cavaliere a number  
16   of times over the course of these last almost three months, and  
17   we had reached out to the parties in the case, who had received  
18   subpoenas out of the Texas court, and asked them to clarify  
19   that they would accept those Texas subpoenas as valid in the  
20   New York court. And we did that just so that -- to determine  
21   whether we would need to serve new subpoenas when the time came  
22   here. Only one of the parties actually responded to that  
23   request. Mr. Oswald was nice enough to agree that his client  
24   would do that. Nobody else responded.

25           And so leading up to this status conference, we did;

1 we served new subpoenas out of New York so that we could come  
2 here today and say, "Your Honor, we are prepared to proceed.  
3 We have served subpoenas. We believe a motion to dismiss  
4 should proceed." And we'd like to establish a discovery  
5 schedule and a trial schedule with respect to that motion to  
6 dismiss.

7 We did that -- we served those subpoenas -- I believe  
8 it was on Friday. We allowed this process -- this hopeful  
9 settlement process to play out completely. And essentially on  
10 the eve of this hearing, in order to be able to say we're ready  
11 to go, we served subpoenas. We haven't called anybody to  
12 follow up on them, to schedule meet-and-confers. We're  
13 allowing this -- we've allowed this process to take place, but  
14 we stand before you today and say it's time to allow our  
15 turnover motion to proceed and, to do that, we need for this  
16 case to be dismissed, because there's nothing to do in this  
17 bankruptcy, other -- and Judge Davis said it in his decision on  
18 the turnover motion. He sent it here because, he said, the  
19 most important thing that's going to be done in this bankruptcy  
20 case is deciding what happens to the 32.3-million-dollar  
21 transfers that were made out of this estate.

22 And so that's what we want; we want the Court to  
23 decide what happens to the 32.3 million. And we think that  
24 eleven of the litigations that were referenced by Mr. Cavaliere  
25 are sideshows. A number of them have already been decided, and

1 they're on appeal, but they've been decided in my client's  
2 favor. But if -- to be clear, if the turnover motion is  
3 granted, none of it matters. That's the entire gating issue in  
4 this case, and we would like that to proceed.

5 Let me just --

6 We're willing to put kind of all the other stuff off:  
7 the objections to discharge, and any of the other -- the  
8 litigations that are out there. We don't need to press forward  
9 on those. We filed them because we had to, for timing -- for  
10 statute-of-limitations or other deadline purposes. We don't  
11 need to press forward on a number of litigations while the  
12 motion to dismiss is pending. We can put those off.

13 THE COURT: All right.

14 MR. PITTA: So --

15 THE COURT: Okay.

16 MR. PITTA: And further, Your Honor, the pending  
17 nature of the motion to dismiss does not forestall settlement  
18 discussions that may otherwise take place. We are not  
19 interested in form over substance. We're not -- we don't care  
20 that there's a bankruptcy pending. We would like it to be  
21 dismissed, because we think it's the wrong venue. But if the  
22 parties, during the bankruptcy, with the help of the trustee,  
23 can enter into a settlement, then we're happy to do that. And  
24 we'll terminate the motion to dismiss and we'll enter into a  
25 9019 agreement and do it here.



1           We don't want to stop settlement discussions. We  
2 don't think they'll be fruitful. But we just think that this  
3 case needs to move forward. And so --

4           THE COURT: All right.

5           MR. CAVALIERE: -- that's where we are, Your Honor.

6           THE COURT: All right, terrific. Thanks very much.

7           MR. CAVALIERE: Thank you.

8           THE COURT: All right, counsel to Arie Genger? Mr.  
9 Oswald or Mr. Moore.

10           MR. OSWALD: Good morning, Your Honor. Frank Oswald  
11 for Arie Genger.

12           THE COURT: Okay.

13           MR. OSWALD: Mr. Genger, as I mentioned, is the  
14 debtor's father, Sagi's father. He is the founder of the  
15 company called Trans-Resources, Inc. The gravamen of this  
16 action, going back some twenty years, is the equity interest in  
17 that company, which, pursuant to divorce settlement  
18 proceedings, Mr. Genger had agreed to fund trusts on behalf of  
19 the son and the daughter equally and, from that, with stock in  
20 the company.

21           In 2008, there was a transaction with the Trumps,  
22 negotiated by Sagi. And pursuant to that agreement, Your  
23 Honor, the Trumps had already paid some 26.7 million dollars  
24 for the equity in the Sagi Trust, some 10.3 million dollars for  
25 the equity in the Orly Trust, and shares on account of Mr.

1 Genger's interest, 7.4 million dollars.

2 Mr. Genger was upset to hear about these transactions.  
3 He pursued claims against the Trumps on account of these  
4 transfers, on account of his claims. And years later in 2013,  
5 there was a subsequent settlement between -- or among the  
6 Trumps, Arie Genger, Orly in her individual capacity, and the  
7 Brosers. And the Brosers go back some fifty years with Mr.  
8 Genger and decided to assist in the funding of the litigation  
9 so that Arie Genger can pursue those claims.

10 And you'll hear, I'm sure, later in the proceedings  
11 and, I guess, in the summaries that Your Honor has requested in  
12 advance of the April conference -- my summary, Your Honor --  
13 I'm just involved in (sic) here since the case got transferred  
14 to New York, so I have a couple of weeks' lead time ahead of  
15 Mr. Cavaliere and the trustee. But the skinnied-down summary  
16 of these litigations and the issues here is probably about  
17 twenty-five pages.

18 Nonetheless, I think what you're going to find and  
19 what has not been found yet by any court and as Mr. Pitta just  
20 said: the entitlement to the balance of this 32.2 (sic)-  
21 million-dollar settlement that the Trumps have not yet paid.  
22 And all the parties on this side of the bench recognize that  
23 the remaining proceeds had been dwindling because the Trumps  
24 had their own counsel, who have been monitoring various  
25 proceedings, have to respond to proceedings from time to time.

1 It's certainly in no one's best interest to continue this  
2 litigation.

3 But what we have is a scenario where the debtor --  
4 term that I've used -- is really collateral damage. And a  
5 father, who is trying to bring closure here to protect the  
6 daughter, has funded her expenses to the tune of over five  
7 million dollars. This Court certainly has many times -- had to  
8 decide property interests, property rights. We too have worked  
9 with Mr. Cavaliere, Ms. Piazza, since they got appointed. A  
10 number of meetings, turnover of documents. And they're  
11 certainly fully capable of making the business decisions that  
12 the trustee's charged to making (sic) on behalf of the estate.

13 I think it's important for the Court to recognize, if  
14 you have not had a chance yet to look at the schedules, the  
15 nature of these claims, Your Honor. This is not a debtor that  
16 was involved in businesses, run up business debt. It's all  
17 debt -- primarily debt related to this fifteen to twenty years  
18 of litigations. It's really quite a shame, the value  
19 destructions.

20 And so we agree with Mr. Cavaliere to allow the  
21 trustee to complete her analysis. As you mentioned, many of  
22 the parties have been working on the outline of a settlement  
23 that we think will also resolve many of the issues. And  
24 ultimately, it could be put before this Court, who's entitled  
25 to the rest of that money.

1           There's no question, I don't think anybody disputes on  
2 its face, that the debtor individually never had shares in this  
3 company. We're talking about the shares that were gifted to  
4 the Orly Gender Trust. But again, these are issues that can be  
5 dealt with. I think they could be dealt with much more quickly  
6 in front of this Court, as is done on many occasions. And  
7 we're looking forward to advancing the ball and getting some of  
8 this, if not all of it, resolved, whether consensually or with  
9 most parties, and the Court having to deal with objections.

10           I do think, and based upon my review of the record, a  
11 lot of what has been requested in various document requests has  
12 already been turned over. Numerous proceedings. But again, we  
13 can address particular document-and-discovery requests with the  
14 parties and with the Court as we get there. But I think the  
15 suggestion of getting summary statements, having a follow-up  
16 conference -- I think Mr. Cavaliere says April 7. Right around  
17 the corner. We'll have a lot more clarity and color for the  
18 Court as to how we can try to get this done. Thank you, Your  
19 Honor.

20           THE COURT: All right. Thank you very much.

21           Counsel for Orly Gender, Ms. Wolinger (sic) --  
22 Willin -- I'm sorry, I'm mispronouncing your name. I  
23 apologize.

24           MS. WLODINGUER: That's fine, Your Honor. It's  
25 [Vloh'-ding-gur], for the record.

1 THE COURT: Thank you.

2 MS. WLODINGUER: Yeah. So, yes, Julia Woldinguer on  
3 behalf of the debtor.

4 Unlike Sagi Genger and TPR, we care very much about  
5 this bankruptcy proceeding. As Mr. Pitta (sic) just told the  
6 Court, we feel the debtor had been collateral damage in the  
7 disputes and family litigations over the past fifteen, twenty  
8 years. The fact of the matter is, at the end of the day,  
9 debtor's liabilities far outweigh her assets. She's an artist.  
10 She does largescale public-art installations. She's a mother.  
11 Her family has been embroiled in this very contentious  
12 litigation for many, many years. And as Mr. Pitta said, she's  
13 collateral damage, essentially.

14 We disagree that a motion to dismiss should be  
15 allowed. A Texas judge, Judge Davis, I believe it was -- in  
16 proceedings on October 23rd, he basically said that a motion to  
17 dismiss could be a, quote-unquote, "nonstarter". And he  
18 acknowledged that debtor's claims belonged in bankruptcy  
19 somewhere. Sagi and other parties aligned with him  
20 acknowledged that the Southern District of New York was such a  
21 venue. Yeah, and we agree that the case should be heard in New  
22 York, right here before you.

23 On the merits, the motion to dismiss is replete with  
24 factual misstatements. Debtor never received the money under  
25 the Trump settlement agreement; she never had a right to it.

1 And everyone involved in that transaction has already testified  
2 to that in other proceedings. She does not have any  
3 entitlement to the notes that were issued in connection with  
4 that settlement agreement.

5 We believe that a dismissal motion would be futile, if  
6 not frivolous. It's definitely a waste of resources before  
7 this Court. There's a limited corpus of the estate. And I  
8 don't think we should be tied up in discovery motions and  
9 motions to dismiss, when there's such a limited estate.

10 The subpoena served by Sagi Genger was served on  
11 Monday. I believe prior counsel indicated that there were nine  
12 served on the same day, which was Monday, I believe. With  
13 respect to the subpoena that was served upon Orly, there are  
14 forty-two discrete document requests, and it called for  
15 production by March 16th; less than two weeks.

16 All of the discovery in the world that could have been  
17 taken between and among these parties has already been taken.  
18 This is just an example of the vexatious discovery and  
19 litigation tactics that are going to be employed if a motion to  
20 dismiss goes forward. To that end, we disagree that it should  
21 go forward. We agree with Mr. Cavaliere's recommendation to  
22 the Court to put this over to allow the trustee additional time  
23 to investigate the claim. We would also ask that the Court put  
24 off the adversary proceedings and discharge action until a  
25 further time, stay it in the interim, until we can agree how to

1 move forward.

2 THE COURT: All right. Thank you very much.

3 All right. Counsel for the Orly Genger Trust; Mr.  
4 Pollack or your colleague?

5 MR. POLLOCK: Good morning, Your Honor. Adam Pollock  
6 for the Orly Genger Trust. And thank you for your time -- for  
7 Your Honor's time and consideration this morning.

8 As Mr. Cavaliere mentioned, we are proceeding -- or  
9 have been proceeding in the district court in the case  
10 captioned "Manhattan Safety" against nondebtor parties.  
11 Basically, as counsel standing here before me have mentioned,  
12 really the main asset that we are talking about is thirty-two  
13 million dollars of funds stemming from a 2013 settlement, which  
14 is the property, we contend, of the Orly Genger Trust and, as  
15 Mr. Oswald said, and we concur, not property of the bankruptcy  
16 estate. These were -- this settlement relates to shares which  
17 were the Orly Genger Trust shares and were shares that were  
18 never owned or held by debtor individually.

19 So this is not money of the bankruptcy estate that we  
20 are litigating about in that matter. The defendants in that  
21 matter, in the district-court matter, have taken the position  
22 that the prosecution of the claims in the district court  
23 interferes with the bankruptcy estate. For the reasons I just  
24 mentioned, we disagree. This is non-bankruptcy-estate money,  
25 we contend, and these are nondebtor parties.

1           So we can't agree to continual -- there's kind of an  
2 informal stay there. We can't consent to continuing that stay  
3 after March 31st, because of the reasons I just mentioned.

4           A couple more short points. We don't want to litigate  
5 for five or ten more years as Mr. Cavaliere mentioned, that  
6 maybe -- I think maybe skeptically he mentioned. We certainly  
7 do not. We hope to get a resolution. We could do the  
8 resolution here -- we could achieve a resolution -- or in the  
9 district court. I'm not concerned about where we write it, but  
10 I am concerned that we move forward.

11           Briefly, a couple other points that have been  
12 mentioned. There's also the action that he mentioned, against  
13 the law firm. Again, nondebtor parties and nondebtor monies.  
14 We can address that separately. But we disagree with his  
15 points and we'll follow up.

16           Finally, on the motion to dismiss, we have no position  
17 on the motion to dismiss, as long as we can move forward with  
18 our actions against the nondebtor parties. But this whole  
19 bankruptcy -- it's hard to understand what we're doing here.  
20 It doesn't make sense to me. And for that reason, the motion  
21 to dismiss does make sense to me if this bankruptcy continues  
22 to impede our ability to proceed against the nondebtor parties  
23 in the district court.

24           I think that's all the --

25           THE COURT: Okay. All right, could I just add to --



1 Mr. Pollock, would you consider extending your agreement to  
2 stand down on the Manhattan Safety litigation? Would you  
3 consider extending that to April the 7th?

4 MR. POLLOCK: From March 31st through -- to April 7th?

5 THE COURT: Yes.

6 MR. POLLOCK: Sure.

7 THE COURT: All right, great. Thank you.

8 MR. POLLOCK: But only to April 7th.

9 THE COURT: I understand.

10 All right. Counsel for Dalia Genger; Mr. Tokayer.

11 MR. TOKAYER: Yes. Ira Tokayer. Good morning, Your  
12 Honor. I join all counsel in thanking you for the attention  
13 you've given to this case this morning.

14 I concur with your suggestion that parties should be  
15 given some time. Adjourn this conference to submit materials  
16 that can give you the full flavor of what's going on here.  
17 Briefly, Your Honor, however, we did file an adversary  
18 proceeding because of the potential deadline. We did not serve  
19 those papers yet. We were waiting for this conference and for  
20 potential settlement discussions with the trustee's counsel.

21 I can hold that action, and would be happy to hold  
22 that action, in abeyance, pending the motion to dismiss, which  
23 I have joined. I believe that the pendency of the bankruptcy  
24 and the dismissal motion is -- it's a threshold matter that  
25 Your Honor should address first and foremost. If the

1 bankruptcy proceeds, then we'll be happy to proceed with the  
2 adversary proceeding promptly.

3 But Mrs. Genger is satisfied that she could pursue her  
4 claims in the action before Judge Broderick and obtain full  
5 relief in that action. She's a plaintiff in that action. The  
6 monies that are being fought over in that action, in our view,  
7 are not part of the bankruptcy estate. And frankly, it's just  
8 this bankruptcy that has delayed Ms. Genger from being able to  
9 obtain the relief to which she's entitled, before Justice  
10 Broderick.

11 As far as the adjournment, however, I need to bring up  
12 just a housekeeping matter. Assuming that the world is the  
13 same then as it is now, I have plans to be out of the country  
14 on April 7th --

15 THE COURT: Well, okay.

16 MR. TOKAYER: -- for the holiday.

17 THE COURT: Oh, okay.

18 MR. TOKAYER: So --

19 THE COURT: All right. We can --

20 MR. TOKAYER: But perhaps I could --

21 THE COURT: We can --

22 MR. TOKAYER: I could make it earlier or later. And  
23 I'm happy to discuss another date with counsel, or now.

24 THE COURT: Yeah, well, why don't you discuss it with  
25 counsel, and in particular with Mr. Pollock.

1 MR. TOKAYER: I'd be happy to, Your Honor.

2 THE COURT: Terrific. Thanks very much.

3 MR. TOKAYER: Again, thank you for your attention.

4 THE COURT: All right. Sure. Thank you.

5 Mr. Gart -- is it Gartman? Do you wish to be heard?

6 MR. GARTMAN: Yes, Your Honor. Chris Gartman from  
7 Hughes Hubbard & Reed, on behalf of ADBG, LLC. That's the  
8 litigation fund everybody's been talking about. And, Your  
9 Honor --

10 THE COURT: Yes.

11 MR. GARTMAN: -- David and Arnold Broser -- you've  
12 heard the Broser name thrown around a lot here -- they are  
13 businesspeople who are members of the entity, ADBG, LLC.

14 So as you've heard --

15 THE COURT: Thank you.

16 MR. GARTMAN: -- a little bit about, ADBG funded the  
17 litigation that was ultimately settled with The Trump Group,  
18 provided -- and is owed over twenty million dollars --  
19 obviously, you would have to subtract the amount that they've  
20 received already, but funded well in excess of twenty million  
21 dollars. We're talking very expensive lawyers; Davis Polk and  
22 Paul Weiss were involved. And as you heard, Skadden was on the  
23 other side. This was years of litigation. And the settlement  
24 that everybody's talking about, this Trump Group settlement,  
25 would not have been possible had it not been funded -- the

1 litigation had not been funded by ADBG.

2           The settlement that you've heard about -- you've heard  
3 a lot about 32.3 million dollars. The settlement itself was  
4 for fifty million dollars. Okay. What you haven't heard is  
5 that there is a share of that settlement -- and you heard Mr.  
6 Oswald talk about it -- in excess of ten million dollars,  
7 relating to the Orly Trust shares, and approximately seven  
8 million dollars allocated to Arie Genger shares that Sagi  
9 Genger, on behalf of TPR, which was a family holding company,  
10 previously had sold those shares to The Trump Group in addition  
11 to his share, which was twenty-seven million dollars. So he  
12 had previously sold forty-four million dollars. As part of  
13 that settlement, the 10. -- whatever it was, 10.7 and 7.4, are  
14 included in that settlement. That money ultimately went to  
15 TPR.

16           So when we talk about the 32.3 million dollars, we're  
17 talking about money that would not have been possible had it  
18 not been for the efforts of Arie Genger to continue to litigate  
19 his interests in the Trump -- in this Trans Resources, Inc.,  
20 referred to as "TRI", against The Trump Group.

21           The settlement came shortly after an appeal had been  
22 filed by Arie Genger, relating to the very amounts that were in  
23 dispute regarding the settlement. What you haven't heard is  
24 that the shares resulted from a divorce between Arie Genger and  
25 Dalia Genger. And as part of what Arie Genger intended as a

1 distribution of the wealth of that family company, the company  
2 that he built, that part of it would go to a trust established  
3 for his daughter, part of it would go to a trust established  
4 for his son, he would get a part of it, and his wife's  
5 consideration was the interest in the family -- a majority  
6 interest in the family holding company.

7           What has happened since then, Your Honor, is that Sagi  
8 Genger has used the position that he obtained from Dalia  
9 Genger, in the family holding company, to try to steal the  
10 entirety of the family wealth and shield it from everybody  
11 else. And I don't use that word lightly, Your Honor. And so  
12 what we have here is years of litigation that have been created  
13 by Sagi Genger, to create what Judge Strine in Delaware said  
14 was an attempt to collect on a Powerball ticket, to take all  
15 the family wealth. I added that last part, Your Honor. But  
16 Judge Strine recognized that what was really happening here is  
17 that Sagi and Dalia Genger were trying to take what was  
18 supposed to be an equal distribution of the family wealth, and  
19 result in Sagi and Dalia having all the money, and Orly getting  
20 nothing.

21           And this is a court of equity. We say it is just  
22 simply not equitable. Judge Strine recognized that also. And  
23 shortly after that hearing in which Judge Strine recognized  
24 that -- stated that Sagi Genger was trying to collect on a  
25 Powerball ticket, not surprisingly, Dalia Genger dismissed that

1 litigation with prejudice. That was regarding the Orly Trust  
2 shares, and it was against The Trump Group. That was shortly  
3 after the July 2013 -- the June 2013 settlement.

4 What you also haven't heard, Your Honor, is that in  
5 June 2012, long prior to the Sagi/Genger lawsuit against Orly  
6 Genger, a year prior to The Trump Group settlement, Orly Genger  
7 and Arie Genger created a trust called The Genger Litigation  
8 Trust. And they assigned to that trust all proceeds of what  
9 I'll just broadly refer to as "the litigation". And what I  
10 mean by that, Your Honor, is the litigation that was funded by  
11 ADBG. And if proceeds of that litigation came in the door,  
12 they were assigned to The Genger Litigation Trust and, pursuant  
13 to that document, were to be distributed to ADBG until such  
14 time as ADBG was, obviously, paid.

15 So what we have now is we have an attempt to collect  
16 the amount that has been paid, 17.3 million dollars, to Arie  
17 Genger, which Arie then used to pay for the litigation funding,  
18 in part. My client is still owed a lot of money. You've heard  
19 4.5 million dollars. It's actually more than that. Obviously,  
20 the meter is still running; I'm here today. But we have an  
21 issue where there's a continuing amount, there's interest,  
22 right, there's continuing legal fees. And any amounts that are  
23 recovered pursuant to that Genger Litigation Trust agreement --  
24 it is our position that such amounts are to be used to pay the  
25 litigation funder, ADBG.

1           So starting in June, shortly before this bankruptcy  
2 was filed, Sagi Genger and Dalia Genger sought to bring in new  
3 claims to recover the proceeds of the settlement that had been  
4 transferred so far and to recover amounts on those two 7.5-  
5 million-dollar notes that are in escrow that have not been  
6 transferred so far. And they engaged in really outrageous  
7 litigation tactics in doing so.

8           You've heard about the Broderick action, which is a  
9 turnover motion brought by Sagi, claiming that the settlement  
10 proceeds belong to Orly Genger. You also heard about the  
11 Manhattan Safety action, in which Dalia and entities that had  
12 been created by Dalia and Sagi are taking the position that one  
13 hundred percent of the settlement proceeds belong to the Orly  
14 Trust.

15           In both instances, they're trying to obtain a hundred  
16 percent of those settlement proceeds, and they have an  
17 intercreditor agreement that they have created, in which they  
18 share the proceed no matter who wins. So they're trying to  
19 spread their chips around the table and pursue the same claim  
20 in multiple courts, using multiple newly created entities, one  
21 of which is a hundred-percent owned by the Orly Trust, so that  
22 they can try to get whatever they can get from wherever they  
23 can get it. And in doing so, they've continued to harass Orly  
24 Genger; and frankly, the only reason that Orly Genger has had  
25 to file for bankruptcy. And it's a sad situation, but it is

1 what it is. And at some point these issues will need to be  
2 addressed.

3 These issues were thoroughly investigated by the  
4 trustee in Texas. These issues are being thoroughly  
5 investigated by the successor trustee here today. Our clients  
6 and us have been very open with both trustees. We have nothing  
7 to hide here. We have provided information and believe that  
8 the trustee here will come to the same conclusion that the  
9 trustee in Texas came to, which is that these claims are  
10 meritless and will be very difficult to prove.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 All right, then, Mr. Herschmann, do you wish to be  
14 heard?

15 MR. HERSCHMANN: Your Honor, Eric Herschman. Just for  
16 two seconds, really.

17 I think that --

18 THE COURT: Thank you.

19 MR. HERSCHMANN: I think that the most prudent thing  
20 for the Court to do would allow the parties to see whether we  
21 can come to resolution and whether Orly can move on with her  
22 life. Thank you.

23 THE COURT: Thank you.

24 MR. PITTA: Your Honor --

25 THE COURT: Okay. Then what --



1 MR. PITTA: Your Honor, it's Thomas Pitta.

2 THE COURT: Yeah.

3 MR. PITTA: I would just ask for one minute for my  
4 partner, Mr. Dellaportas, to respond to some of the statements  
5 made by --

6 THE COURT: Sure.

7 MR. PITTA: -- Mr. Gartman.

8 THE COURT: All right. That's fine.

9 MR. DELLAPORTAS: So -- thank you, Your Honor. I'll  
10 be very brief.

11 One of the reasons these litigations have gone on for  
12 fifteen years is, when -- even when certain -- when judges have  
13 decided things, they tend to be relitigated by certain of the  
14 parties. And when I was listening to Mr. Gartman, virtually  
15 everything he said is contradicted by final adjudicated rulings  
16 of various courts.

17 In particular, with regard to the thirty-two million,  
18 District Judge Forrest twice ruled that that money was  
19 attributable solely to Orly having, quote, "monetized her  
20 beneficial interest in the TRI shares". Both of those rulings  
21 were then appealed by Orly and unanimously affirmed by separate  
22 panels of the Second Circuit.

23 With regard to an earlier allegation that my client  
24 somehow had stolen money, he's referring to an action in which  
25 District Judge Keenan found that certain other proceeds not at

1 issue in this case were properly awarded to TPR Investment  
2 Associates.

3 So a lot of what we're hearing are things -- and it's  
4 one of the reasons we wanted the motion to dismiss, is we feel  
5 we can very carefully lay out the relevant rulings of the prior  
6 federal courts and, to a certain extent, the appellate division  
7 of the state court. And really, everything of consequence has  
8 already been adjudicated, and what we simply need at this point  
9 is an implementation of that through the appropriate turnover  
10 proceeding. Thank you.

11 THE COURT: Okay, thank you.

12 Anyone else wish to be heard?

13 Okay, here's how --

14 MR. CAVALIERE: Your Honor?

15 THE COURT: -- I'd like to --

16 MR. CAVALIERE: I'm sorry.

17 THE COURT: Oh, yes.

18 MR. CAVALIERE: Rocco Cavaliere, Tarter Krinsky. If I  
19 could just --

20 THE COURT: No problem.

21 MR. CAVALIERE: -- be heard briefly, Your Honor?

22 THE COURT: Yes. Of course.

23 MR. CAVALIERE: Just in response to Mr. Pitta from  
24 earlier; yeah, there is this theory that this case gets  
25 dismissed and they go back to Judge Broderick, that they now

1 have obviously control of the litigation; Judge Broderick is  
2 just simply going to grant this turnover motion. Maybe. But  
3 they don't have a crystal ball as to what the ultimate merits  
4 will be. Obviously, it's thirty-two million dollars at stake.  
5 In my experience, usually doesn't get decided in a month or  
6 two, on a turnover motion.

7 And so when Mr. Pitta speaks about his -- the  
8 likelihood of success or all that needs to be done is dismiss  
9 the case, the turnover motion, we're going to win, the trustee,  
10 as an independent fiduciary, doesn't just go for broke. That's  
11 why we have a system, Your Honor. We have an ability for an  
12 individual that is not partial, that can make appropriate  
13 judgments and assess the risks of litigation, the costs of  
14 litigation, and obtain a potential settlement that may not be  
15 thirty-two million, Your Honor. There may be a discount off  
16 that; no question. And then we have an obligation to present  
17 that to the Court for approval, and all rights are preserved  
18 because creditors can file objections if they can demonstrate  
19 that the settlement is unreasonable.

20 With respect to just the public policy concerning a  
21 bankruptcy case, this is actually a perfect example of a case  
22 that's absolutely warranted and needed. You have one forum  
23 that can address and finally conclude massive litigation over a  
24 course of many years. You have a debtor that at least is  
25 entitled to a presumption of getting a fresh start and being

1 able to get a discharge. And again, there again, parties have  
2 a right to object to the discharge, which they have. And they  
3 could certainly press it. But hopefully that doesn't happen  
4 and she can maybe move on with her life.

5 So there's a lot of policy reasons, the automatic  
6 stay, why this case should remain. I think Your Honor stated  
7 earlier that Your Honor's not going to decide those issues and  
8 schedule the hearing now. I think Your Honor's suggestion of  
9 letters, status updates, from each party, two weeks before the  
10 hearing, whenever that is -- assumably (sic) April 7th. If  
11 we're moving it, so be it. But we'll each provide our views  
12 and, by then, hopefully we've reached a settlement that we can  
13 outline for the Court; if not, we'll let the Court know where  
14 we are.

15 And then also with respect to the status update on the  
16 charts for the litigations, we will work with the other parties  
17 as to what the current status is. If for some reason parties  
18 have a dispute as to -- about the pendency of any of those  
19 actions and what took place and the rulings and so forth, we'll  
20 state that in the chart, as to the parties' views of what the  
21 current status is, because I think there's some --

22 THE COURT: All right.

23 MR. CAVALIERE: -- disputes about whether certain  
24 things -- around certain findings and so forth. And I just  
25 envision that that could potentially be a problem. I don't

1 want to hang that up.

2 So with that said, Your Honor, I just -- one  
3 mechanical question with respect to the charts of the  
4 litigation and with respect to the status updates. Should I  
5 assume that you want those electronically filed, or would you  
6 prefer that we submit them to chambers without filing on the  
7 court docket?

8 THE COURT: No, I'd like it all to be electronically  
9 filed. But just one thing. I think Mr. -- again, it's Mr.  
10 Pitta. I think he did say that, if he lost, so be it, I think  
11 were his words, but that he thought Orly had enough money to  
12 pay, at least one time, all of the -- all of her creditors.  
13 But that being said --

14 MR. CAVALIERE: Your Honor, if I may just jump in.  
15 There are other creditors here. It's -- Kasowitz is a  
16 creditor, Zeichner Ellman's a creditor --

17 THE COURT: Excuse me. Mr. --

18 MR. CAVALIERE: -- Mr. Herschmann's a creditor. So --

19 THE COURT: Mr. Cavaliere --

20 MR. CAVALIERE: -- it's not -- we try to preserve --

21 THE COURT: Mr. Cavaliere, hold it.

22 MR. CAVALIERE: -- some money for everyone.

23 THE COURT: Yes. I don't want to argue about it. I'm  
24 just trying to -- and maybe it was silly of me to think that I  
25 should take a moment to try to correct what I thought was just

1 a mistake that you were making as it related to what was in the  
2 record. A lot was said. I probably should have just left it  
3 alone.

4 So to answer your question, what I would like is for  
5 all of the documents that we've been talking about be filed of  
6 record. And I very much appreciate your willingness to take  
7 the lead on trying to put together the summary of the various  
8 actions and where things stand. I think that would be very  
9 helpful.

10 What I would add is that you folks confirm on (sic)  
11 yourselves -- I know Mr. Tokayer has an issue timingwise, and  
12 we'll try to work through that.

13 Mr. Pollock, I can't force you to stand down. At  
14 least as things now stand, I can't do that. I would ask and I  
15 hope that you would be able to do that. I know we talked about  
16 the 7th. I don't know, given the timing for Mr. Tokayer,  
17 whether -- what impact, if any, that's going to have on the --  
18 on our getting together again.

19 So I don't want to be in the situation where we have  
20 some people who can't come and then we move forward without  
21 them. But I'm going to leave all of that to you folks. And  
22 you'll please get back to Ms. Rodriguez and give her just a  
23 proposal as to dates that work for the group. And then I would  
24 like, as I'd indicated, two weeks before that time. And if it  
25 goes out -- if we go beyond April the 7th, I'd like three

1 weeks, if you could, but two weeks I can probably live with,  
2 just to go -- so that I have, again, the summary from the  
3 parties as to where things stand and your views on these  
4 things, so that, when we get together the next time we do, we  
5 can talk about scheduling and how to proceed with the various  
6 actions. Does that work for everyone?

7 MR. POLLOCK: Very good. Thank you, Your Honor. And  
8 for the record, Adam Pollock.

9 THE COURT: All right.

10 MR. POLLOCK: That's fine, Your Honor. Thank you.

11 THE COURT: Terrific.

12 MR. PITTA: Your Honor, it's Thomas Pitta. If I could  
13 raise one, just, housekeeping matter in addition. We had  
14 circulated --

15 THE COURT: Yes --

16 MR. PITTA: -- to various parties, and various parties  
17 have actually previously agreed to, a confidentiality  
18 stipulation. We had circulated to the -- I believe, the  
19 remaining parties. And we think it's important to get that  
20 done. Hopefully we can agree, amongst all the parties, to that  
21 and then have that submitted to the Court for entry as a  
22 confidentiality order in the case. And so I would hope --

23 THE COURT: Okay.

24 MR. PITTA: Go ahead, Your Honor.

25 THE COURT: All right. All right, we have just -- you

1 know, we have chambers rules as it relates to that. So just  
2 take a look at that. But that sounds fine --

3 MR. PITTA: Thank you, Your Honor.

4 THE COURT: -- as far as getting that taken care of.

5 All right, is there anything else we need to chat  
6 about today?

7 MR. HERSCHMANN: Yes, Your Honor. It's Eric  
8 Herschmann. I just want to raise one issue on the --

9 THE COURT: Yeah.

10 MR. HERSCHMANN: -- on the confidentiality order,  
11 which I didn't think --

12 THE COURT: Yes, sir.

13 MR. HERSCHMANN: -- was going to come up today. And  
14 I'd asked counsel, Mr. Pitta or Mr. Dellaportas, or even Sagi  
15 Genger, who's in the courtroom here today, to address this  
16 point. They accused me of bankruptcy fraud and intimidating a  
17 witness in a filing in Texas. We filed an opposition that  
18 showed Orly did not have an account in Israel, contrary to the  
19 representations that they made.

20 I went to Israel. I hired counsel there to  
21 investigate it, to confirm it. We turned over the information  
22 to the prior trustee. The investigator, who Sagi Genger hired,  
23 illegally, under Israeli law, obtained travel records for Orly,  
24 and her old bank history, bank record, from sixteen or so years  
25 ago. He likewise admitted that he illegally obtained my



1 information and my travel records and that a report was  
2 provided to Sagi Genger and, I believe, Mr. Dellaportas.

3 So before we get into discussion of a protective order  
4 of confidentiality agreements, I would like to know and ask an  
5 inquiry, what information have they illegally obtained from me.  
6 There is an ongoing criminal investigation in Israel because of  
7 it. And there's been other issues where, pursuant to Justice  
8 Freeman's protective order, certain of my information has been  
9 provided in violation of that order.

10 So before we get into a potential confidentiality  
11 agreement, I would at least like to understand violations that  
12 have occurred, and then I can work in what potential remedies  
13 or cures would need to be done. But I'd ask for they (sic) at  
14 least to produce to either this court or me the information  
15 that they've obtained about my financial records.

16 THE COURT: All right.

17 MR. DELLAPORTAS: So, very briefly, Your Honor. We're  
18 not aware of any --

19 THE COURT: Yes.

20 MR. DELLAPORTAS: Oh, this is John Dellaportas.

21 THE COURT: I'm sorry --

22 MR. DELLAPORTAS: We're not aware of any illegality.  
23 There was an issue with regard to the transfer, where the  
24 debtor claimed she lived in Austin and only Austin. And  
25 therefore, an Israeli investigator was hired and found out that

1 the debtor had in fact spent much of her time in Israel,  
2 contrary to representations she made to the Court. That report  
3 was provided in full to Mr. Herschmann. We have nothing  
4 further beyond what we've provided. He's had it for I don't  
5 know how many months. He apparently then went to our  
6 investigator and frightened him in some fashion, threatened to  
7 sue him, and so forth.

8 So that's a whole issue for another day, which we'd be  
9 happy to address.

10 MR. HERSCHMANN: Your Honor, it's Eric Herschmann. If  
11 I could just address that. And maybe we can get Mr.  
12 Dellaportas to answer the question specifically, because I have  
13 no doubt it'll be relevant in various jurisdictions: did they  
14 obtain --

15 THE COURT: I'm sorry, Mr. Herschmann. Mr.  
16 Herschmann, I'm sorry to interrupt you.

17 MR. HERSCHMANN: Sure.

18 THE COURT: I understand the problem.

19 MR. HERSCHMANN: Okay.

20 THE COURT: And it's -- you can understand my -- from  
21 your perspective, it's quite serious. I don't want to try to  
22 do this on this -- at this hearing right now today. You raise  
23 a very good point as to the issues around the confidentiality  
24 agreement. And your point is -- I think you're saying -- or  
25 you'll correct me if I'm wrong, please -- that you're not

1 prepared to talk about that, until you understand what it is  
2 they've got. Is that fair?

3 MR. HERSCHMANN: That's exactly right, Your Honor; and  
4 if they violated the prior orders.

5 THE COURT: Right. Okay. And so the way I think we  
6 should do this, at least in the interim, is you can move  
7 forward in that; you can have your discussions. Mr.  
8 Herschmann, you would please include, in anything that you  
9 submit, and, Mr. Pitta and Mr. Dellaportas, you would as well,  
10 to address those issues, if in fact they are issues, once you  
11 guys have had an opportunity to look at them -- and hopefully  
12 you'll be able to resolve it.

13 But I understand that, as we're moving forward, at  
14 least, Mr. Herschmann, from your perspective, that's something  
15 that's a gating issue for you.

16 MR. HERSCHMANN: That's exactly correct, Your Honor.

17 THE COURT: Okay. All right, so that's how we'll  
18 proceed. And again, please get in touch with Ms. Rodriguez.

19 And, Mr. Cavaliere, thanks very much for taking time  
20 to walk me through all of the various actions and the steps and  
21 all of that. I appreciate it. I appreciate very much all of  
22 you taking time today to be in court to be able to chat with me  
23 about all of this stuff. I'm hopeful that you'll be able to  
24 work through towards a resolution. And you'll see where things  
25 stand when we next get together.

1           So I think we're all set. And again, thank you all  
2 very, very much.

3           MR. CAVALIERE: Thank you very much, Your Honor. Feel  
4 better.

5           IN UNISON: Thank you, Your Honor.

6           THE COURT: Thanks very much. Bye-bye.

7           (Whereupon these proceedings were concluded at 1:51 PM)

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C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true  
and accurate record of the proceedings.



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Clara Rubin

eScribers  
352 Seventh Ave., Suite #604  
New York, NY 10001

Date: March 9, 2020

[	actually (10) 7:16;14:6;19:13; 37:17;42:15;44:7; 45:22;61:19;66:21; 70:17	12;55:13;58:3;67:1, 1;68:9;69:18;70:2; 74:18;75:1	69:3 along (3) 40:19;43:12,19	33:20;66:17 approximately (1) 59:7
[Vloh'-ding-gur] (1) 51:25	ADAM (5) 5:17;9:12;17:19; 54:5;70:8	against (23) 15:13,15,18; 20:15;22:12,13,14; 24:6;26:18;27:4; 28:8,17;33:18;35:3; 36:23;49:3;54:10; 55:12,18,22;59:20; 61:2,5	alternative (3) 38:14,16,16 although (1) 23:12	April (11) 19:25;33:15; 39:23;49:12;51:16; 56:3,4,8;57:14; 67:10;69:25
A	ADB (14) 4:13;10:16,17; 20:19;26:18;33:22; 58:7,13,16;59:1; 61:11,13,14,25	ago (1) 71:25	amended (1) 28:18	argue (1) 68:23
ABDG (2) 24:2;27:5	add (2) 55:25;69:10	agree (9) 20:8;34:8;45:23; 50:20;52:21;53:21, 25;55:1;70:20	among (2) 49:5;53:17	Arie (25) 6:3;8:16;9:1; 20:17;24:1,16;25:5; 26:2;32:9;34:9,16; 37:19,20;48:8,11; 49:6,9;59:8,18,22, 24,25;61:7,16,17
abetting (1) 28:7	added (1) 60:15	agreed (9) 24:13,13;34:12; 36:5,6,10,21;48:18; 70:17	amount (3) 58:19;61:16,21	arise (1) 20:6
abeyance (1) 56:22	addition (6) 15:17;35:11;36:7; 37:2;59:10;70:13	agreements (2) 34:21;72:4	amounts (5) 26:10;59:22; 61:22,24;62:4	arising (1) 25:23
ability (3) 34:23;55:22;66:11	additional (1) 53:22	agrees (1) 39:1	amplify (1) 17:6	arm's-length (1) 38:9
able (11) 11:4,9;14:3;33:14; 46:10;57:8;67:1; 69:15;74:12,22,23	address (10) 18:12;40:17; 51:13;55:14;56:25; 66:23;71:15;73:9, 11;74:10	ahead (6) 12:21;31:6;40:9; 41:15;49:14;70:24	analysis (1) 50:21	Arnold (2) 20:17;58:11
abomination (1) 44:10	addressed (3) 22:5;29:11;63:2	aiding (1) 28:7	analyzing (1) 35:22	around (7) 35:14,15;51:16; 58:12;62:19;67:24; 73:23
A-B-O-U-L-A (1) 9:20	addresses (1) 15:18	aligned (1) 52:19	anticipate (2) 25:9;29:14	arrived (1) 19:17
ABOULAFIA (5) 9:15,17,17,20,22	adjoin (3) 40:7,8;56:15	allegation (1) 64:23	apart (1) 24:25	artist (1) 52:9
Absolutely (3) 17:18;29:25;66:22	adjourn (3) 40:7,8;56:15	allegations (1) 25:4	apologies (1) 19:4	aspect (3) 36:17;37:1,18
accept (1) 45:19	adjourned (1) 45:6	alleged (5) 23:6;24:4,11,17; 28:23	apologize (6) 11:17;19:1;31:4,5; 41:11;51:23	aspects (3) 33:7;36:18;37:6
accepted (1) 38:15	adjournment (1) 57:11	allegedly (1) 24:19	apparently (2) 38:5;73:5	asserted (3) 15:13;23:19;34:18
accommodate (1) 45:6	adjudicated (2) 64:15;65:8	allocated (1) 59:8	appeal (4) 22:18;26:12;47:1; 59:21	assess (1) 66:13
accomplish (1) 12:10	administer (1) 31:2	allow (11) 21:4;37:24;38:1; 39:10;42:15,25; 45:11;46:14;50:20; 53:22;63:20	appealed (1) 64:21	asset (2) 35:1;54:12
account (4) 48:25;49:3,4; 71:18	administration (3) 21:5;32:6;39:21	allowed (3) 46:8,13;52:15	appearance (1) 17:16	assets (6) 41:25;43:6,9,15; 44:24;52:9
accused (1) 71:16	admitted (1) 71:25	allowing (2) 26:5;46:13	appearances (2) 30:18;40:24	assigned (3) 23:17;61:8,12
achieve (2) 30:9;55:8	adult (1) 35:13	allows (2) 39:22;42:14	appeared (1) 40:20	assignee (1) 24:3
acknowledged (2) 52:18,20	advance (1) 49:12	almost (3) 43:4;45:10,16	appellate (1) 65:6	assist (1) 49:8
action (29) 20:14;21:20;24:2, 7;25:16;26:17,19,25; 27:2,18,19;28:2,6,8, 16;43:8;44:21; 48:16;53:24;55:12; 56:21,22;57:4,5,5,6; 62:8,11;64:24	advancing (1) 51:7	alone (1)	appointment (1) 32:1	Associates (2) 4:3;65:2
actions (26) 16:22;19:6,11,13, 23,25;20:1,7,9; 25:15,16;27:16,17, 19;29:19,21,23;35:3; 37:24;39:18;40:17; 55:18;67:19;69:8; 70:6;74:20	adversary (4) 21:24;53:24; 56:17;57:2		appreciate (4) 43:18;69:6;74:21, 21	assumably (1) 67:10
actual (1) 39:17	affiliated (1) 15:21		appropriate (7) 20:13;26:13; 42:13,18;43:17; 65:9;66:12	assume (1) 68:5
	affirmative (1) 22:12		approval (2)	Assuming (1) 57:12
	affirmed (2) 25:20;64:21			attempt (2) 60:14;61:15
	again (17) 7:21;10:2;11:3; 21:25;30:3,21;51:4,			attention (3)

27:24;56:12;58:3 <b>Attorneys (6)</b> 4:3,13,21;5:3,12; 6:3 <b>attributable (1)</b> 64:19 <b>Austin (5)</b> 42:19,20;44:9; 72:24,24 <b>automatic (2)</b> 24:7;67:5 <b>available (1)</b> 36:15 <b>Avenue (1)</b> 5:4 <b>awarded (1)</b> 65:1 <b>aware (5)</b> 15:25;19:25; 27:25;72:18,22 <b>away (1)</b> 44:15	<b>basis (3)</b> 16:11;25:8;36:22 <b>Battery (1)</b> 4:14 <b>behalf (21)</b> 7:6,15;8:20;9:7, 13,18;10:15,21; 11:15;12:16;13:20; 17:4,21;19:2;27:10; 41:8;48:18;50:12; 52:3;58:7;59:9 <b>believes (2)</b> 35:21;36:8 <b>belong (5)</b> 24:22;28:14; 43:10;62:10,13 <b>belonged (2)</b> 28:15;52:18 <b>bench (1)</b> 49:22 <b>beneficial (1)</b> 64:20 <b>beneficiaries (1)</b> 16:23 <b>BENSON (2)</b> 4:20;36:20 <b>best (1)</b> 50:1 <b>better (3)</b> 11:18;30:18;75:4 <b>beyond (2)</b> 69:25;73:4 <b>bigger (1)</b> 28:13 <b>bills (1)</b> 44:14 <b>bit (3)</b> 12:3;23:9;58:16 <b>both (5)</b> 22:11;26:1;62:15; 63:6;64:20 <b>Bowen (2)</b> 20:16;24:1 <b>breach (1)</b> 28:6 <b>breaches (1)</b> 16:22 <b>breach-of-fiduciary- (1)</b> 28:7 <b>breach-of-fiduciary-duty (2)</b> 15:12;22:16 <b>break (1)</b> 24:18 <b>BRIAN (4)</b> 6:7;8:15;9:2,3 <b>brief (2)</b> 11:21;64:10 <b>briefly (6)</b> 40:5,14;55:11; 56:17;65:21;72:17 <b>bring (5)</b> 19:23;37:24;50:5; 57:11;62:2	<b>bringing (2)</b> 28:6;42:25 <b>Broad (1)</b> 5:13 <b>broadly (1)</b> 61:9 <b>Broadway (2)</b> 4:5,22 <b>Broderick (14)</b> 25:18;28:3;42:1,7, 14;43:1,7,14;44:22; 57:4,10;62:8;65:25; 66:1 <b>broke (1)</b> 66:10 <b>Broser (5)</b> 20:17,18;23:5; 58:11,12 <b>Brothers (16)</b> 24:1,16;25:6; 26:18;27:4;32:9; 33:19,22;34:9,12; 35:7;36:9,10;42:21; 49:7,7 <b>brother (5)</b> 8:6;19:8;34:5; 36:23;38:13 <b>brought (10)</b> 24:3;26:20;27:21, 24;42:18,22;43:7,11, 13;62:9 <b>bucks (1)</b> 44:14 <b>built (1)</b> 60:2 <b>bulk (1)</b> 24:17 <b>burdensome (1)</b> 12:2 <b>business (2)</b> 50:11,16 <b>businesses (1)</b> 50:16 <b>businesspeople (1)</b> 58:13 <b>Bye-bye (1)</b> 75:6	10:1;14:12;17:4; 18:13,20;20:3,12; 21:6;25:12;27:11, 12;29:18,24;30:9,21; 31:20;39:20,23,23; 40:9,10,17,23;44:14; 47:12,23;49:9;51:4, 13,18;53:25;55:14, 17;56:16,21;57:19, 21;62:22,22,23; 63:21,21;65:5;66:12, 18,18,23;67:4,12; 70:1,5,20;72:12; 73:11,20;74:6,7 <b>capable (1)</b> 50:11 <b>capacity (2)</b> 26:21;49:6 <b>captioned (1)</b> 54:10 <b>care (3)</b> 47:19;52:4;71:4 <b>carefully (1)</b> 65:5 <b>Case (69)</b> 7:2;10:23;11:6,24; 12:13,23,23;13:3,7, 15;20:7;21:1,5;22:2, 13,13,14;23:4,16,17, 18,20;24:15,16,20, 23;25:19,22;27:2; 28:13;30:3;31:2,15; 32:3,6,16,17,22; 38:12,15;39:5; 41:23;42:14,23;43:2, 4,4,5,8,13,21,25; 45:4,17;46:16,20; 47:4;48:3;49:13; 52:21;54:9;56:13; 65:1,24;66:9,21,21; 67:6;70:22 <b>cases (16)</b> 14:21;18:2,17; 19:12;21:19;22:9,10, 14,17,19;23:9,11; 27:8;31:13;32:3,4 <b>cash (1)</b> 36:6 <b>cause (1)</b> 26:25 <b>CAVALIERE (86)</b> 7:5,6,10;11:14,14, 17,21;12:7,9,20,22; 13:3,6;14:14,18,22, 25;15:2,6,9;16:16; 17:3,8;18:16,20,21, 22;19:1,1,4,13,22; 20:5,12,24;21:8,12, 14,21,24;22:8;23:15, 23,25;25:14;27:7,14, 23;28:2;29:25; 30:11,13,20,20,25; 31:7,10;40:22;41:1,	4;45:4,15;46:24; 48:5,7;49:15;50:9, 20;51:16;54:8;55:5; 65:14,16,18,18,21, 23;67:23;68:14,18, 19,20,21,22;74:19; 75:3 <b>Cavaliere's (1)</b> 53:21 <b>centered (1)</b> 16:21 <b>certain (9)</b> 39:18;43:25; 64:12,13,25;65:6; 67:23,24;72:8 <b>certainly (12)</b> 11:21;15:24; 16:17,19;37:22; 38:7;39:7;50:1,7,11; 55:6;67:3 <b>cetera (1)</b> 29:23 <b>chambers (2)</b> 68:6;71:1 <b>chance (3)</b> 11:7;23:11;50:14 <b>Chapter (1)</b> 7:7 <b>charged (1)</b> 50:12 <b>chart (3)</b> 29:18;30:5;67:20 <b>charts (2)</b> 67:16;68:3 <b>chat (2)</b> 71:5;74:22 <b>children (1)</b> 35:13 <b>chips (1)</b> 62:19 <b>C-H-M-A-N-N (1)</b> 10:21 <b>CHRIS (3)</b> 4:17;10:12;58:6 <b>Circuit (2)</b> 25:21;64:22 <b>circulate (1)</b> 30:2 <b>circulated (2)</b> 70:14,18 <b>claim (4)</b> 35:9;37:19;53:23; 62:19 <b>claimed (1)</b> 72:24 <b>claiming (1)</b> 62:9 <b>claims (21)</b> 15:12,16;22:12,16, 16,17,18;23:19;25:8; 34:12;36:23;43:25; 49:3,4,9;50:15; 52:18;54:22;57:4;
<b>B</b>				
<b>back (11)</b> 20:21;37:7;39:11, 23;42:8,14;43:15; 48:16;49:7;65:25; 69:22 <b>background (4)</b> 11:22;12:3;33:5; 43:24 <b>baked (1)</b> 38:6 <b>balance (1)</b> 49:20 <b>ball (2)</b> 51:7;66:3 <b>bank (2)</b> 71:24,24 <b>bankruptcy (50)</b> 12:23;13:3,11,14, 15,22,25;14:2,4,4; 18:7;22:2;23:20; 24:16,23;25:3,22; 26:13;31:20,25;32:3, 16;36:16;42:9;43:2, 4,8,11,13;45:8,9; 46:17,19;47:20,22; 52:5,18;54:15,19,23; 55:19,21;56:23;57:1, 7,8;62:1,25;66:21; 71:16 <b>Barbara (1)</b> 22:11 <b>based (2)</b> 13:11;51:10 <b>bases (1)</b> 26:22 <b>basically (5)</b> 18:8;40:11;44:14; 52:16;54:11				
		<b>C</b>		
		<b>call (3)</b> 21:19;40:10;41:3 <b>called (4)</b> 46:11;48:15; 53:14;61:7 <b>calls (1)</b> 32:7 <b>calm (2)</b> 39:20,21 <b>came (6)</b> 19:12;42:4;45:21; 59:21;61:11;63:9 <b>can (57)</b>		



ORLY GINGER

Main Case No. 19-13895-jlg

March 4, 2020

62:3;63:9	<b>concerns (1)</b>	34:11;62:23	3,5,7;16:6,8,9,10,12,	<b>cross-claims (1)</b>
<b>claims-administration (1)</b>	29:7	<b>continues (2)</b>	14,24,25;17:7,9,13,	15:14
13:13	<b>conclude (1)</b>	21:5;55:21	20,23;18:2,3,7,9,9,9,	<b>crystal (1)</b>
<b>clarify (1)</b>	66:23	<b>continuing (4)</b>	11,15,19,21,23;19:3,	66:3
45:18	<b>concluded (2)</b>	25:10;55:2;61:21,	6,10,20;20:4,11,23;	<b>Cullen (1)</b>
<b>clarity (1)</b>	32:5;75:7	22	21:7,13,17,22;22:7,	9:17
51:17	<b>conclusion (3)</b>	<b>contradicted (1)</b>	10:23;14,22,24;	<b>cures (1)</b>
<b>clear (4)</b>	42:16,25;63:8	64:15	25:13;27:6,13,15,20,	72:13
17:15;27:16;	<b>concur (2)</b>	<b>contrary (2)</b>	20,21;28:1;29:9,10,	<b>curious (1)</b>
45:15;47:2	54:15;56:14	71:18;73:2	16;30:4,6,12,14,24;	11:10
<b>clearly (1)</b>	<b>condo (2)</b>	<b>contributed (2)</b>	31:4,8,20,22;33:14;	<b>current (5)</b>
42:9	35:12,19	26:1;35:17	38:23;39:7,8,25;	15:20;33:10;
<b>clerk (1)</b>	<b>conference (6)</b>	<b>contributing (1)</b>	40:4,25;41:2,6,10,	37:14;67:17,21
14:7	33:14;45:25;	36:12	13,15;42:1,19;45:9,	
<b>client (5)</b>	49:12;51:16;56:15,	<b>contributions (1)</b>	18,20;46:22;47:13,	<b>D</b>
15:19;19:9;45:23;	19	26:5	15;48:4,6,8,12;	
61:18;64:23	<b>conferences (5)</b>	<b>control (1)</b>	49:19;50:7,13,24;	<b>D&amp;K (5)</b>
<b>clients (2)</b>	19:7,21,24,25;	66:1	51:6,9,14,18,20;	5:3;9:25;10:3,5;
12:16;63:5	33:16	<b>controversial (4)</b>	52:1,6;53:7,22,23;	22:15
<b>client's (1)</b>	<b>confidentiality (6)</b>	28:12;36:18,19;	54:2,9,22;55:9,23,	<b>Dalia (28)</b>
47:1	70:17,22;71:10;	37:19	25;56:5,7,9;57:15,	5:3;9:25;10:3,7;
<b>closed (1)</b>	72:4,10;73:23	<b>cooperation (1)</b>	17,19,21,24;58:2,4,	15:11,13,18;16:3;
26:16	<b>confirm (2)</b>	38:4	10,15;60:21;63:12,	19:7;20:14;21:1;
<b>closure (1)</b>	69:10;71:21	<b>coordinate (2)</b>	18,20,23,25;64:2,6,	22:13,14;25:18,24;
50:5	<b>confirmed (1)</b>	13:23;14:9	8;65:7,11,15,17,20,	26:2,4;34:4;36:24;
<b>Code (1)</b>	25:20	<b>cordial (1)</b>	22;66:17;67:13,13,	56:10;59:25;60:8,17,
36:16	<b>connection (4)</b>	29:12	22;68:7,8,17,19,21,	19,25;62:2,11,12
<b>COHEN (2)</b>	28:11;33:18;35:6;	<b>core (2)</b>	23;70:9,11,15,21,23,	<b>D-A-L-I-A (1)</b>
5:11;9:13	53:3	18:8,9	25;71:4,9,12;72:14,	10:7
<b>collateral (3)</b>	<b>consensually (1)</b>	<b>corner (1)</b>	16,19,21;73:2,15,18,	<b>damage (3)</b>
50:4;52:6,13	51:8	51:17	20;74:5,17,22;75:6	50:4;52:6,13
<b>colleague (4)</b>	<b>consent (1)</b>	<b>corpus (1)</b>	<b>courtroom (2)</b>	<b>DANIEL (2)</b>
8:15,24,24;54:4	55:2	53:7	11:4;71:15	5:2,8
<b>collect (3)</b>	<b>consented (1)</b>	<b>costs (1)</b>	<b>courts (4)</b>	<b>date (3)</b>
60:14,24;61:15	18:6	66:13	22:25;62:20;	33:14,15;57:23
<b>collection (1)</b>	<b>consequence (1)</b>	<b>counsel (30)</b>	64:16;65:6	<b>dates (2)</b>
43:12	65:7	11:5;13:9;17:25;	<b>courts' (1)</b>	19:21;69:23
<b>color (3)</b>	<b>consider (2)</b>	20:1;21:1,1,2;23:13;	22:24	<b>daughter (4)</b>
15:24;17:5;51:17	56:1,3	24:8,9;28:20;29:13;	<b>court's (2)</b>	26:6;48:19;50:6;
<b>coming (1)</b>	<b>considerable (1)</b>	30:1;32:8,9;36:20;	16:20;20:9	60:3
11:3	39:9	41:19;48:8;49:24;	<b>covered (1)</b>	<b>David (2)</b>
<b>commenced (7)</b>	<b>consideration (5)</b>	51:21;53:11;54:3,	27:8	20:18;58:11
13:3;19:7,11,14;	32:24;36:5;37:20;	11;56:10,12,20;	<b>covering (1)</b>	<b>Davis (7)</b>
20:14;26:17;28:3	54:7;60:5	57:23,25;71:14,20	26:21	32:16;37:5;38:14,
<b>committed (1)</b>	<b>constructive (1)</b>	<b>count (1)</b>	<b>create (1)</b>	19;46:17;52:15;
28:24	20:20	27:16	60:13	58:21
<b>company (9)</b>	<b>constructive-trust (2)</b>	<b>country (1)</b>	<b>created (5)</b>	<b>day (3)</b>
48:15,17,20;51:3;	21:19;27:18	57:13	60:12;61:7;62:12,	52:8;53:12;73:8
59:9;60:1,1,6,9	<b>contend (2)</b>	<b>couple (4)</b>	17,20	<b>days (5)</b>
<b>complaint (3)</b>	54:14,25	34:18;49:14;55:4,	<b>creditor (10)</b>	24:13;25:11;32:1;
12:15;28:17,18	<b>contentious (1)</b>	11	8:11;10:24;24:4,	33:20;43:21
<b>complete (2)</b>	52:11	<b>course (5)</b>	10,11;26:21;34:14;	<b>deadline (3)</b>
21:15;50:21	<b>contested (1)</b>	22:25;40:7;45:16;	68:16,16,18	45:5;47:10;56:18
<b>completed (1)</b>	38:1	65:22;66:24	<b>creditors (7)</b>	<b>deal (4)</b>
32:12	<b>contingency (1)</b>	<b>COURT (219)</b>	37:11;42:10;	22:15,16;31:24;
<b>completely (2)</b>	36:22	7:2,9,13,17,18,20,	44:16,25;66:18;	51:9
18:12;46:9	<b>continual (1)</b>	23;8:2,3,4,6,9,13,17,	68:12,15	<b>dealing (1)</b>
<b>concern (1)</b>	55:1	19,21,25;9:4,8,11,16,	<b>creditors-of-this- (1)</b>	33:6
28:21	<b>continue (8)</b>	19,21,23;10:1,4,6,8,	44:9	<b>deals (1)</b>
<b>concerned (3)</b>	29:14;31:17;	10,14,17,19,22;11:1,	<b>criminal (1)</b>	13:21
40:13;55:9,10	36:25;39:21,21;	16,20;12:6,8;13:1,2,	72:6	<b>dealt (3)</b>
<b>concerning (1)</b>	43:17;50:1;59:18	5,14,15,25;14:2,4,4,	<b>cross (1)</b>	13:12;51:5,5
66:20	<b>continued (2)</b>	8,9,12,15,20,24;15:1,	27:18	<b>Deborah (5)</b>



7:6,7;19:9,18; 20:19 <b>debt (3)</b> 50:16,17,17 <b>Debtor (33)</b> 6:13;8:20;9:7; 10:25;15:25;20:15; 23:18;25:23;26:12, 21;28:8,11,14;35:14, 18,19,24;36:1,13; 42:9,21;43:15; 44:24;50:3,15;51:2; 52:3,6,24;54:18; 66:24;72:24;73:1 <b>debtors (2)</b> 13:7;15:15 <b>debtor's (13)</b> 8:6,16;10:9;20:1, 17;23:12;35:11; 36:20;41:24;43:6; 48:14;52:9,18 <b>decade (1)</b> 44:18 <b>decedents (1)</b> 18:4 <b>December (1)</b> 19:17 <b>decide (7)</b> 38:20;43:1,14; 44:22;46:23;50:8; 67:7 <b>decided (11)</b> 21:14;22:21;37:4; 38:15;42:12,15; 46:25;47:1;49:8; 64:13;66:5 <b>decides (3)</b> 42:3,7,11 <b>deciding (1)</b> 46:20 <b>decision (1)</b> 46:17 <b>decisions (1)</b> 50:11 <b>defendants (1)</b> 54:20 <b>defending (2)</b> 20:1;35:3 <b>defenses (1)</b> 43:25 <b>defined (1)</b> 34:4 <b>definitely (1)</b> 53:6 <b>Delaware (1)</b> 60:13 <b>delay (1)</b> 39:9 <b>delayed (1)</b> 57:8 <b>deleterious (1)</b> 39:17 <b>DELLAPORTAS (14)</b>	4:9;7:15,24;27:9; 64:4,9;71:14;72:2, 17,20,20,22;73:12; 74:9 <b>demand (1)</b> 26:7 <b>demand (1)</b> 26:10 <b>demonstrate (1)</b> 66:18 <b>described (2)</b> 44:11,12 <b>description (1)</b> 29:19 <b>destructions (1)</b> 50:19 <b>detailed (1)</b> 29:20 <b>determination (2)</b> 24:15;29:2 <b>determine (3)</b> 28:14,24;45:20 <b>determined (3)</b> 26:11,13;28:23 <b>different (2)</b> 14:8;39:2 <b>difficult (1)</b> 63:10 <b>direct (1)</b> 12:3 <b>directed (1)</b> 13:8 <b>directly (1)</b> 26:9 <b>disagree (4)</b> 52:14;53:20; 54:24;55:14 <b>discharge (9)</b> 19:5;20:9;21:19; 27:17;29:23;47:7; 53:24;67:1,2 <b>discount (1)</b> 66:15 <b>discovery (5)</b> 45:14;46:4;53:8, 16,18 <b>discrete (1)</b> 53:14 <b>discuss (3)</b> 25:12;57:23,24 <b>discussing (1)</b> 37:20 <b>discussion (1)</b> 72:3 <b>discussions (8)</b> 23:12;28:20;29:4, 12;47:18;48:1; 56:20;74:7 <b>dismiss (31)</b> 28:18;35:4;38:14, 15,17,18,24;39:1,10, 15;41:17;42:13,17, 18;45:13;46:3,6;	47:12,17,24;52:14, 17,23;53:9,20;55:16, 17,21;56:22;65:4; 66:8 <b>dismissal (3)</b> 38:20;53:5;56:24 <b>dismissed (4)</b> 46:16;47:21; 60:25;65:25 <b>dispute (5)</b> 16:13,21;25:7; 59:23;67:18 <b>disputes (3)</b> 51:1;52:7;67:23 <b>distributed (1)</b> 61:13 <b>distribution (2)</b> 60:1,18 <b>District (19)</b> 11:12;12:25;13:1, 4,10,16;14:9;19:18; 27:20,21;42:1,24; 52:20;54:9,22;55:9, 23;64:18,25 <b>district-court (2)</b> 31:22;54:21 <b>division (1)</b> 65:6 <b>divorce (3)</b> 26:3;48:17;59:24 <b>divorced (1)</b> 26:3 <b>docket (2)</b> 14:11;68:7 <b>document (3)</b> 51:11;53:14;61:13 <b>document-and-discovery (1)</b> 51:13 <b>documents (4)</b> 11:8;15:23;50:10; 69:5 <b>dollar (1)</b> 35:7 <b>dollars (32)</b> 23:7;24:18;25:23; 26:20;33:20,21,22; 34:13,25;35:9; 36:11;42:4,8;43:9, 15;48:23,24;49:1; 50:7;54:13;58:18, 21;59:3,4,6,8,11,12, 16;61:16,19;66:4 <b>done (12)</b> 20:2;31:1,5;35:17; 43:18;44:23;46:19; 51:6,18;66:8;70:20; 72:13 <b>door (1)</b> 61:11 <b>doubt (1)</b> 73:13 <b>down (3)</b> 41:2;56:2;69:13	<b>dozen (2)</b> 22:25;31:14 <b>draft (1)</b> 34:21 <b>drafting (1)</b> 11:23 <b>draining (1)</b> 35:1 <b>Drogin (1)</b> 11:15 <b>due (2)</b> 25:1;33:25 <b>dug (1)</b> 43:19 <b>during (4)</b> 12:24;22:2;39:23; 47:22 <b>duty (3)</b> 16:22;28:7,8 <b>dwindling (1)</b> 49:23 <b>Dykman (1)</b> 9:18 <b>E</b> <b>earlier (5)</b> 36:25;57:22; 64:23;65:24;67:7 <b>early (2)</b> 32:25;33:4 <b>effect (1)</b> 39:18 <b>efficient (1)</b> 42:24 <b>Effort (3)</b> 28:3,18;37:11 <b>efforts (4)</b> 37:25;39:24; 43:12;59:18 <b>either (3)</b> 11:5;29:8;72:14 <b>electronically (2)</b> 68:5,8 <b>eleven (2)</b> 27:11;46:24 <b>Elizabeth (1)</b> 9:17 <b>Ellman (1)</b> 28:9 <b>Ellman's (1)</b> 68:16 <b>else (9)</b> 8:23;9:23;10:11; 11:2;43:9;45:24; 60:11;65:12;71:5 <b>elsewhere (1)</b> 16:8 <b>embroiled (1)</b> 52:11 <b>EMMET (3)</b> 4:2;7:14;41:8 <b>employed (1)</b>	53:19 <b>enable (1)</b> 44:1 <b>end (6)</b> 13:20;16:13,14; 31:21;52:8;53:20 <b>ended (2)</b> 16:20,24 <b>energies (1)</b> 39:24 <b>engaged (1)</b> 62:6 <b>enjoin (1)</b> 16:3 <b>enough (4)</b> 42:9;44:24;45:23; 68:11 <b>enter (2)</b> 47:23,24 <b>entered (3)</b> 13:24;14:10,21 <b>entering (1)</b> 42:20 <b>enterprise (1)</b> 25:25 <b>Enterprises (1)</b> 26:1 <b>entire (1)</b> 47:3 <b>entirety (1)</b> 60:10 <b>entities (2)</b> 62:11,20 <b>entitled (6)</b> 16:1;35:9;38:2; 50:24;57:9;66:25 <b>entitlement (2)</b> 49:20;53:3 <b>entity (7)</b> 8:9;25:5;27:4; 28:4,5;33:22;58:13 <b>entry (1)</b> 70:21 <b>envision (1)</b> 67:25 <b>equal (1)</b> 60:18 <b>equally (1)</b> 48:19 <b>equitable (1)</b> 60:22 <b>equity (4)</b> 48:16,24,25;60:21 <b>Eric (9)</b> 4:21,25;10:20; 20:18;34:13;35:11; 63:15;71:7;73:10 <b>escrow (1)</b> 62:5 <b>ESQ (9)</b> 4:8,9,17,21,25;5:8, 17;6:7,8 <b>essentially (5)</b>
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16:3;25:15;32:25; 46:9;52:13 <b>establish (1)</b> 46:4 <b>established (3)</b> 45:13;60:2,3 <b>estate (27)</b> 8:12;13:13;18:4; 23:20;24:23;25:3; 29:1;35:10,25;36:11, 15;39:18,22;42:4,6, 8;43:6,16;44:16; 46:21;50:12;53:7,9; 54:16,19,23;57:7 <b>estate's (1)</b> 44:10 <b>et (1)</b> 29:23 <b>eve (3)</b> 41:24;45:5;46:10 <b>even (2)</b> 64:12;71:14 <b>eventually (1)</b> 43:14 <b>everybody (2)</b> 21:11;60:10 <b>everybody's (3)</b> 21:10;58:8,24 <b>everyone (7)</b> 21:16;30:8;39:12; 41:1;53:1;68:22; 70:6 <b>everywhere (1)</b> 23:2 <b>evidence (1)</b> 38:9 <b>exactly (2)</b> 74:3,16 <b>example (3)</b> 39:3;53:18;66:21 <b>exception (1)</b> 18:10 <b>excess (2)</b> 58:20;59:6 <b>excuse (5)</b> 8:21;13:2;14:16; 18:21;68:17 <b>exhausting (1)</b> 26:12 <b>expectation (1)</b> 38:5 <b>expenses (1)</b> 50:6 <b>expensive (1)</b> 58:21 <b>experience (1)</b> 66:5 <b>explain (1)</b> 18:5 <b>extending (2)</b> 56:1,3 <b>extensively (1)</b> 43:23	<b>extent (8)</b> 13:21;22:5;26:24; 28:25;34:14;35:8; 39:12;65:6  <b>F</b>  <b>face (3)</b> 33:24;38:17;51:2 <b>fact (6)</b> 23:2;31:23;36:1; 52:8;73:1;74:10 <b>factual (2)</b> 20:6;52:24 <b>Fair (3)</b> 30:11,13;74:2 <b>familiar (1)</b> 16:11 <b>family (13)</b> 11:24;22:23; 25:25;52:7,11;59:9; 60:1,5,6,9,10,15,18 <b>Fantastic (1)</b> 41:4 <b>far (13)</b> 20:24;21:18; 24:21;25:15;29:4, 13;31:2;40:13;52:9; 57:11;62:4,6;71:4 <b>fashion (1)</b> 73:6 <b>father (5)</b> 8:16;42:21;48:14, 14:50:5 <b>favor (2)</b> 39:13;47:2 <b>favorable (1)</b> 39:12 <b>February (6)</b> 13:18;14:23; 28:19;32:11,13;33:1 <b>federal (1)</b> 65:6 <b>federal- (1)</b> 18:10 <b>federal-court (1)</b> 32:4 <b>Feel (5)</b> 11:18;29:9;52:6; 65:4;75:3 <b>fees (3)</b> 34:23,25;61:22 <b>few (4)</b> 32:1;33:12;41:17; 44:14 <b>fiduciary (3)</b> 16:22;28:7;66:10 <b>fierce (1)</b> 37:1 <b>fifteen (9)</b> 11:25;23:1;31:16; 39:4;41:20,21; 50:17;52:7;64:12	<b>fifteen- (1)</b> 24:25 <b>fifteen-year (1)</b> 22:23 <b>fifty (2)</b> 49:7;59:4 <b>fight (1)</b> 26:4 <b>figure (2)</b> 30:7;40:10 <b>figuring (1)</b> 21:10 <b>file (6)</b> 26:13;32:18;37:3; 56:17;62:25;66:18 <b>filed (24)</b> 12:15;15:14;19:6; 21:2;27:2;28:17,17, 18;38:13;41:23; 42:1;43:2,4,5;45:4,8, 8;47:9;59:22;62:2; 68:5,9;69:5;71:17 <b>filings (6)</b> 25:22;31:19,25; 34:12;68:6;71:17 <b>final (1)</b> 64:15 <b>finally (3)</b> 42:15;55:16;66:23 <b>financial (1)</b> 72:15 <b>find (2)</b> 16:8;49:18 <b>findings (1)</b> 67:24 <b>fine (9)</b> 11:20;21:17; 40:22,24;41:14; 51:24;64:8;70:10; 71:2 <b>firm (2)</b> 28:10;55:13 <b>firms (5)</b> 28:8,9,10,17;39:2 <b>first (4)</b> 8:2;30:1;37:12; 56:25 <b>five (3)</b> 31:17;50:6;55:5 <b>flavor (1)</b> 56:16 <b>Floor (1)</b> 5:14 <b>focus (6)</b> 20:10;23:3,4,8; 32:14;39:24 <b>focused (1)</b> 23:3 <b>focusing (1)</b> 37:13 <b>folks (5)</b> 29:24;32:11; 40:20;69:10,21	<b>follow (2)</b> 46:12;55:15 <b>follow-up (1)</b> 51:15 <b>force (1)</b> 69:13 <b>foremost (1)</b> 56:25 <b>forestall (1)</b> 47:17 <b>forgive (1)</b> 16:11 <b>forgot (1)</b> 27:25 <b>form (2)</b> 29:18;47:19 <b>formally (1)</b> 29:11 <b>formed (1)</b> 28:5 <b>former (1)</b> 36:20 <b>Forrest (3)</b> 25:17;26:11;64:18 <b>forth (3)</b> 67:19,24;73:7 <b>Fortunately (1)</b> 31:19 <b>forty-five (2)</b> 24:13;25:11 <b>forty-four (1)</b> 59:12 <b>forty-two (1)</b> 53:14 <b>forum (1)</b> 66:22 <b>forward (18)</b> 26:16;29:8,15; 34:24;40:13,19;47:8, 11;48:3;51:7;53:20, 21;54:1;55:10,17; 69:20;74:7,13 <b>fought (1)</b> 57:6 <b>found (3)</b> 49:19;64:25;72:25 <b>founder (1)</b> 48:14 <b>four (2)</b> 33:6;35:24 <b>FRANK (4)</b> 6:8;8:14;9:20; 48:10 <b>frankly (10)</b> 17:25;22:22;23:1; 29:3;38:8;39:3,4; 44:2;57:7;62:24 <b>fraud (2)</b> 22:17;71:16 <b>fraudulent (4)</b> 23:7;26:24;33:18; 44:21 <b>fraudulent-inducement (1)</b>	22:15 <b>fraudulently (1)</b> 42:5 <b>Freeman (1)</b> 23:16 <b>Freeman's (1)</b> 72:8 <b>fresh (1)</b> 66:25 <b>Friday (1)</b> 46:8 <b>frightened (1)</b> 73:6 <b>frivolous (1)</b> 53:6 <b>front (2)</b> 27:20;51:6 <b>fruitful (1)</b> 48:2 <b>full (4)</b> 18:1;56:16;57:4; 73:3 <b>fully (3)</b> 36:7;38:6;50:11 <b>fund (2)</b> 48:18;58:8 <b>funded (6)</b> 50:6;58:16,20,25; 59:1;61:10 <b>funder (3)</b> 10:16;15:19;61:25 <b>funding (2)</b> 49:8;61:17 <b>funds (1)</b> 54:13 <b>further (4)</b> 22:5;47:16;53:25; 73:4 <b>futile (1)</b> 53:5 <b>future (1)</b> 22:6  <b>G</b>  <b>garage (1)</b> 36:2 <b>Gart (1)</b> 58:5 <b>GARTMAN (13)</b> 4:17;10:12,12,15, 18;27:5;58:5,6,6,11, 16;64:7,14 <b>G-A-R-T-M-A-N (1)</b> 10:13 <b>Gartman's (1)</b> 15:19 <b>gating (2)</b> 47:3;74:15 <b>gave (1)</b> 34:23 <b>Gener (1)</b> 51:21
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<b>Genger (136)</b> 4:3;5:3,12;6:3,12; 7:2,16,16,25;8:1,4, 16;9:7,13,18,25; 10:7;13:20,21;15:11, 13,14,18;16:3,23; 17:4,12,21;19:8,8,8; 20:15,15,17,18,22:1, 12,13,13,14,15,19, 23;24:1,1,3,5,9,11, 12,16;25:3,4,5,6,18, 18,18,19,24,24,25; 26:1,2,17,18,20,25, 25;27:10;28:5,11,15, 20;31:24;33:11; 34:3,9,9,11,16; 35:20;36:19;37:19; 38:5,13;41:8;43:10; 44:15;45:5;48:8,11, 13,18;49:2,6,8,9; 51:4;52:4;53:10; 54:3,6,14,17;56:10; 57:3,8;59:8,9,18,22, 24,25,25;60:8,9,13, 17,24,25;61:6,6,7,7, 12,17,23;62:2,2,10, 24,24;71:15,22;72:2	15:21;16:4;25:1; 34:1,3,4,6,6,8,19; 35:3;58:17,24;59:10, 20;61:2,6;69:23 <b>guess (4)</b> 21:8;26:20;35:16; 49:11 <b>guys (2)</b> 12:12;74:11	<b>H-E-R-S- (1)</b> 10:20 <b>Herschman (1)</b> 63:15 <b>Herschmann (30)</b> 4:21,25;10:20,20, 24;20:17,18;32:11; 34:13;35:11,21; 36:4;63:13,15,19; 71:7,8,10,13;73:3, 10,10,15,16,17,19; 74:3,8,14,16 <b>Herschmann's (2)</b> 36:21;68:18 <b>herself (1)</b> 9:14 <b>Hi (1)</b> 11:16 <b>hide (1)</b> 63:7 <b>high-level (1)</b> 12:2 <b>himself (1)</b> 35:24 <b>hindsight (1)</b> 35:17 <b>hired (3)</b> 71:20,22;72:25 <b>history (2)</b> 32:22;71:24 <b>hit (1)</b> 14:11 <b>hold (11)</b> 7:20;8:19,21,21, 21,21;9:16;39:16; 56:21,21;68:21 <b>holding (3)</b> 59:9;60:6,9 <b>holiday (1)</b> 57:16 <b>home (2)</b> 35:18;44:23 <b>homestead (1)</b> 35:13 <b>homework (1)</b> 33:2 <b>Honor (106)</b> 7:5,8,11,12;8:8,14; 9:12,15,22,24;10:12, 20;11:14,18,23; 12:22;13:11;14:8,11, 18,25;15:6,9,21,24; 17:11,18;18:16;19:5, 22;20:5;22:8,22; 23:15;25:14;26:22; 27:23;28:14;29:25; 30:4,5,20;31:7,11, 12;32:15;33:6; 34:19;37:7;38:12,20, 25;39:1,22;40:3; 41:4,7,16;43:3; 45:14;46:2;47:16; 48:5,10,23;49:11,12;	50:15;51:19,24; 54:5;56:12,17,25; 58:1,6,9;60:7,11,15; 61:4,10;63:11,15,24; 64:1,9;65:14,21; 66:11,15;67:6;68:2, 14;70:7,10,12,24; 71:3,7;72:17;73:10; 74:3,16;75:3,5 <b>Honor's (3)</b> 54:7;67:7,8 <b>hope (8)</b> 20:5;21:3;29:14; 30:9;39:8;55:7; 69:15;70:22 <b>hoped (1)</b> 11:9 <b>hopeful (3)</b> 33:12;46:8;74:23 <b>hopefully (5)</b> 40:1;67:3,12; 70:20;74:11 <b>hopes (1)</b> 43:25 <b>hoping (7)</b> 23:2;29:11;35:5; 39:1,7,20,22 <b>housekeeping (2)</b> 57:12;70:13 <b>HUBBARD (3)</b> 4:12;10:13;58:7 <b>HUGHES (3)</b> 4:12;10:13;58:7 <b>hundred (2)</b> 62:13,15 <b>hundred-percent (1)</b> 62:21 <b>hundreds (1)</b> 31:13 <b>husband (3)</b> 20:17;35:11,24 <b>husbands (1)</b> 35:16	<b>implicate (1)</b> 20:7 <b>implicates (1)</b> 24:7 <b>important (3)</b> 46:19;50:13;70:19 <b>impose (1)</b> 20:19 <b>improve (6)</b> 32:23;33:4,7;36:5; 37:12,14 <b>improved (1)</b> 37:21 <b>improving (1)</b> 39:24 <b>Inc (7)</b> 4:4;23:21,25;28:3, 18;48:15;59:19 <b>include (2)</b> 34:4;74:8 <b>included (1)</b> 59:14 <b>includes (1)</b> 18:3 <b>including (2)</b> 15:19;23:5 <b>incurred (2)</b> 34:24,25 <b>indemnification (1)</b> 34:22 <b>indemnify (1)</b> 26:10 <b>indemnity (1)</b> 25:23 <b>independent (1)</b> 66:10 <b>indicated (2)</b> 53:11;69:24 <b>indicating (1)</b> 28:21 <b>indiscernible (1)</b> 38:3 <b>individual (2)</b> 49:6;66:12 <b>individually (2)</b> 51:2;54:18 <b>informal (1)</b> 55:2 <b>information (8)</b> 32:5;43:24;63:7; 71:21;72:1,5,8,14 <b>initial (3)</b> 23:8,12;28:19 <b>initially (5)</b> 16:21,24;20:25; 26:8;30:22 <b>inquiry (1)</b> 72:5 <b>insofar (2)</b> 28:22;36:19 <b>installations (1)</b> 52:10 <b>instance (1)</b>
<b>GINGER# (1)</b> 6:13 <b>Genger's (6)</b> 21:1;32:8,9;37:20; 42:4;49:1 <b>gets (1)</b> 65:24 <b>gift (1)</b> 35:23 <b>gifted (1)</b> 51:3 <b>given (3)</b> 56:13,15;69:16 <b>glad (1)</b> 11:22 <b>global (1)</b> 45:2 <b>goes (2)</b> 53:20;69:25 <b>Good (17)</b> 7:5,8,10,12;8:14; 9:12,15,24;10:12; 17:11;35:16;41:7; 48:10;54:5;56:11; 70:7;73:23 <b>GP (4)</b> 5:3;9:25;10:3,5 <b>grant (2)</b> 38:18;66:2 <b>granted (2)</b> 38:16;47:3 <b>gravamen (1)</b> 48:15 <b>great (2)</b> 17:9;56:7 <b>Group (18)</b>	<b>half (1)</b> 26:10 <b>handled (1)</b> 13:19 <b>hang (1)</b> 68:1 <b>happen (3)</b> 10:24;24:14;67:3 <b>happened (3)</b> 13:14;42:5;60:7 <b>happening (2)</b> 44:18;60:16 <b>happens (3)</b> 42:3;46:20,23 <b>happy (8)</b> 30:21;40:14; 47:23;56:21;57:1, 23;58:1;73:9 <b>harass (1)</b> 62:23 <b>hard (1)</b> 55:19 <b>hasn't# (1)</b> 44:18 <b>head (1)</b> 39:16 <b>hear (9)</b> 12:10;14:18; 16:14;18:7;30:7; 40:5,14;49:2,10 <b>heard (22)</b> 29:7;30:15;39:7; 40:7,11;52:21;58:5, 12,14,22;59:2,2,4,5, 23;61:4,18;62:8,10; 63:14;65:12,21 <b>hearing (11)</b> 25:12;38:24;39:9; 40:1;45:12;46:10; 60:23;65:3;67:8,10; 73:22 <b>held (2)</b> 34:10;54:18 <b>Hellerstein (4)</b> 13:18,24;14:17,21 <b>help (1)</b> 47:22 <b>helpful (2)</b> 32:6;69:9 <b>here's (1)</b> 65:13	<b>I</b>	<b>I-A (1)</b> 9:20 <b>identify (2)</b> 12:1;29:22 <b>illegality (1)</b> 72:22 <b>illegally (3)</b> 71:23,25;72:5 <b>impact (4)</b> 15:15;23:18,19; 69:17 <b>impeachment (1)</b> 32:12 <b>impede (1)</b> 55:22 <b>implementation (1)</b> 65:9	

15:10 <b>instances (1)</b> 62:15 <b>instead (1)</b> 45:8 <b>integrated (1)</b> 36:7 <b>intended (1)</b> 59:25 <b>intent (1)</b> 32:20 <b>intention (3)</b> 13:10,12;38:7 <b>intercreditor (2)</b> 34:17;62:17 <b>interest (11)</b> 35:18,19;43:9; 45:1;48:16;49:1; 50:1;60:5,6;61:21; 64:20 <b>interested (2)</b> 44:16;47:19 <b>interests (2)</b> 50:8;59:19 <b>interferes (1)</b> 54:23 <b>interim (3)</b> 24:13;53:25;74:6 <b>interrupt (5)</b> 12:20;17:1,14; 19:11;73:16 <b>intervene (1)</b> 29:10 <b>intimidating (1)</b> 71:16 <b>into (14)</b> 13:24;14:12;15:1; 18:13;23:9;33:10; 37:11;42:4,8,20; 47:23,24;72:3,10 <b>introduce (1)</b> 9:14 <b>investigate (2)</b> 53:23;71:21 <b>investigated (3)</b> 28:24;63:3,5 <b>investigation (2)</b> 37:25;72:6 <b>investigator (3)</b> 71:22;72:25;73:6 <b>Investment (2)</b> 4:3;65:1 <b>Investments (4)</b> 7:16,25;8:11;41:9 <b>involve (3)</b> 15:8,8,9 <b>involved (9)</b> 16:17;19:23; 21:25;27:10;34:7; 49:13;50:16;53:1; 58:22 <b>IRA (4)</b> 5:2,8,9;24;56:11	<b>Israel (4)</b> 71:18,20;72:6; 73:1 <b>Israeli (2)</b> 71:23;72:25 <b>issue (11)</b> 21:3;22:22;25:9; 47:3;61:21;65:1; 69:11;71:8;72:23; 73:8;74:15 <b>issued (2)</b> 14:16;53:3 <b>issues (17)</b> 12:1;13:13;20:6,6; 36:20;43:20;49:16; 50:23;51:4;63:1,3,4; 67:7;72:7;73:23; 74:10,10 <b>J</b> <b>Jaffe# (1)</b> 22:11 <b>January (2)</b> 32:10,13 <b>Jenna (1)</b> 14:7 <b>job (2)</b> 38:1;39:6 <b>JOHN (3)</b> 4:9;7:15;72:20 <b>join (1)</b> 56:12 <b>joined (1)</b> 56:23 <b>joint (1)</b> 13:24 <b>Judge (36)</b> 13:18,23;14:16, 21;22:11;23:17; 25:17,17,17;26:11; 27:20;28:3;32:16; 37:4;38:14,19;42:1, 7,14,25;43:7,14; 44:11,21;46:17; 52:15,15;57:4;60:13, 16,22,23;64:18,25; 65:25;66:1 <b>judges (4)</b> 31:22,22;44:4; 64:12 <b>judgment (3)</b> 25:19,22;26:21 <b>judgments (1)</b> 66:13 <b>Julia (1)</b> 52:2 <b>Julie (2)</b> 8:18;9:6 <b>July (7)</b> 12:24;13:2,4; 26:14;31:25;45:4; 61:3	<b>jump (2)</b> 20:12;68:14 <b>June (5)</b> 20:22;25:21;61:3, 5;62:1 <b>jurisdiction (4)</b> 16:12;18:3,10,11 <b>jurisdictions (1)</b> 73:13 <b>Justice (2)</b> 57:9;72:7 <b>K</b> <b>Kailas (1)</b> 9:6 <b>KASOWITZ (8)</b> 4:20;20:16;21:25; 22:10;27:11,18; 36:20;68:15 <b>Keenan (1)</b> 64:25 <b>keep (3)</b> 21:23;37:19;39:21 <b>kind (5)</b> 22:20;41:18; 43:20;47:6;55:1 <b>known (1)</b> 27:4 <b>Krause (1)</b> 28:9 <b>Krinsky (5)</b> 7:6;11:15;19:2; 31:2;65:18 <b>L</b> <b>largescale (1)</b> 52:10 <b>last (8)</b> 7:21;9:8,19;23:1; 41:23;45:4,16;60:15 <b>later (5)</b> 23:9;39:7;49:4,10; 57:22 <b>laud (1)</b> 45:1 <b>LAW (5)</b> 5:2;28:8;39:14; 55:13;71:23 <b>lawsuit (1)</b> 61:5 <b>lawyers (1)</b> 58:21 <b>lawyers' (1)</b> 45:6 <b>lay (1)</b> 65:5 <b>lead (4)</b> 24:8,9;49:14;69:7 <b>leading (1)</b> 45:25 <b>leases (1)</b>	34:6 <b>least (10)</b> 16:21;20:25; 44:25;66:24;68:12; 69:14;72:11,14;74:6, 14 <b>leave (2)</b> 34:19;69:21 <b>led (2)</b> 25:19,21 <b>left (3)</b> 34:19;35:2;69:2 <b>legal (3)</b> 34:23,25;61:22 <b>legitimate (2)</b> 42:10;44:16 <b>less (1)</b> 53:15 <b>letters (1)</b> 67:9 <b>Lexington (1)</b> 5:4 <b>liabilities (1)</b> 52:9 <b>lien (3)</b> 35:8;36:8,12 <b>life (2)</b> 63:22;67:4 <b>light (3)</b> 26:4;32:22;38:8 <b>lightly (1)</b> 60:11 <b>likelihood (1)</b> 66:8 <b>likely (1)</b> 44:7 <b>likewise (1)</b> 71:25 <b>limbo (1)</b> 45:3 <b>limitations (1)</b> 21:3 <b>limited (2)</b> 53:7,9 <b>line (1)</b> 34:16 <b>lines (1)</b> 43:12 <b>liquidated (1)</b> 26:8 <b>listening (1)</b> 64:14 <b>litigate (2)</b> 55:4;59:18 <b>litigating (2)</b> 44:3;54:20 <b>litigation (57)</b> 10:16;11:11,13, 24;12:14,18;15:19; 16:5,18;20:18; 22:24;23:2;24:2; 25:4;26:18;27:11; 31:15,17,21,24;	36:13;37:25;39:3, 15;41:20,21;42:2,3, 6,11;43:17;45:12; 49:8;50:2;52:12; 53:19;56:2;58:8,17, 23;59:1;60:12;61:1, 7,9,10,11,12,17,23, 25;62:7;66:1,13,14, 23;68:4 <b>litigations (9)</b> 34:7;46:24;47:8, 11;49:16;50:18; 52:7;64:11;67:16 <b>litigation's (1)</b> 34:11 <b>little (4)</b> 17:5;31:1;32:21; 58:16 <b>live (2)</b> 35:13;70:1 <b>lived (1)</b> 72:24 <b>LLC (6)</b> 4:13;5:3;10:16,19; 58:7,13 <b>LLP (5)</b> 4:2,12,20;5:11;6:2 <b>long (5)</b> 23:10;40:22;44:3; 55:17;61:5 <b>longer (2)</b> 25:10;45:3 <b>look (7)</b> 14:12;15:1;23:9; 44:8;50:14;71:2; 74:11 <b>looked (1)</b> 44:11 <b>looking (2)</b> 32:2;51:7 <b>lose (2)</b> 44:22,23 <b>lost (1)</b> 68:10 <b>lot (12)</b> 11:7;30:15;35:2; 37:11;51:11,17; 58:12;59:3;61:18; 65:3;67:5;69:2 <b>love (1)</b> 44:6 <b>luck (1)</b> 39:11 <b>M</b> <b>Magistrate (1)</b> 23:16 <b>main (2)</b> 24:10;54:12 <b>Maine (4)</b> 23:21,25;24:9; 26:23
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<b>M-A-I-N-E (1)</b> 23:25	67:4;68:24;73:11	<b>mispronouncing (1)</b> 51:22	<b>motion (42)</b> 18:13;22:1;32:17; 38:13,17,18,24;39:1, 10,15;40:2;41:17,25; 42:13,17,18,19;43:1; 45:13;46:3,5,15,18; 47:2,12,17,24;52:14, 16,23;53:5,19;55:16, 17,20;56:22,24;62:9; 65:4;66:2,6,9	6:5;11:12;13:10,16; 15:4;19:12;22:3; 27:19;30:3;45:20, 21;46:1,1;49:14; 52:20,21;62:2
<b>Maines (1)</b> 24:4	17:1;29:4;61:10	<b>missed (2)</b> 21:22;27:9	<b>motions (7)</b> 18:7,12,14;28:17; 35:4;53:8,9	<b>newly (1)</b> 62:20
<b>major (1)</b> 32:7	34:11	<b>Missry (1)</b> 28:10	<b>move (9)</b> 40:19;48:3;54:1; 55:10,17;63:21; 67:4;69:20;74:6	<b>next (7)</b> 9:5;21:24;30:8; 33:14;39:23;70:4; 74:25
<b>majority (1)</b> 60:5	68:3	<b>misstatements (1)</b> 52:24	<b>moving (8)</b> 11:7;21:23;26:16; 38:8;39:6;40:13; 67:11;74:13	<b>nice (1)</b> 45:23
<b>makes (1)</b> 21:15	44:4	<b>mistake (1)</b> 69:1	<b>Mrs (1)</b> 57:3	<b>nightmare (1)</b> 31:21
<b>making (8)</b> 16:4;33:11;37:16, 22;38:10;50:11,12; 69:1	32:13	<b>misunderstandings (1)</b> 41:19	<b>much (18)</b> 9:4;11:9;31:8,8, 10;48:6;51:5,20; 52:4;54:2;58:2;69:6; 73:1;74:19,21;75:2, 3,6	<b>nine (3)</b> 39:2,2;53:11
<b>malpractice (3)</b> 28:6,23,25	46:12	<b>mom (1)</b> 10:9	<b>much-improved (1)</b> 33:13	<b>Nobody (1)</b> 45:24
<b>Manhattan (9)</b> 23:20,22,23;24:4, 8;26:23;54:10;56:2; 62:11	50:10	<b>moment (1)</b> 68:25	<b>multiple (2)</b> 62:20,20	<b>non-bankruptcy-estate (1)</b> 54:24
<b>many (12)</b> 31:24;38:8;40:16; 43:20;50:7,21,23; 51:6;52:12,12; 66:24;73:5	58:13	<b>Monday (2)</b> 53:11,12	<b>myself (1)</b> 10:21	<b>nondebtor (6)</b> 54:10,25;55:13,13, 18,22
<b>March (4)</b> 24:14;53:15;55:3; 56:4	43:23	<b>monetized (1)</b> 64:19	<b>N</b>	<b>none (1)</b> 47:3
<b>marriage (1)</b> 35:16	<b>mention (1)</b> 27:25	<b>money (20)</b> 23:5;26:7,8;34:8; 35:2,5;36:9,14; 50:25;52:24;54:19, 24;59:14,17;60:19; 61:18;64:18,24; 68:11,22	<b>name (10)</b> 7:21;8:2;9:8,19; 18:24,25;23:20; 41:10;51:22;58:12	<b>Nonetheless (1)</b> 49:18
<b>married (1)</b> 35:15	<b>merits (2)</b> 52:23;66:3	<b>money's (1)</b> 34:10	<b>nature (2)</b> 47:17;50:15	<b>nonstarter (1)</b> 52:17
<b>MARTIN (3)</b> 4:2;7:14;41:8	<b>met (6)</b> 32:9,10,10,11; 33:1;35:14	<b>monies (6)</b> 24:22;34:15; 36:10,10;55:13;57:6	<b>need (16)</b> 18:11;29:20;31:9; 32:23;39:4,19;42:9; 45:21;46:15;47:8, 11;57:11;63:1;65:8; 71:5;72:13	<b>Normally (2)</b> 13:1;14:1
<b>MARVIN (3)</b> 4:2;7:14;41:8	<b>meter (1)</b> 61:20	<b>monitoring (1)</b> 49:24	<b>needed (2)</b> 26:7;66:22	<b>note (6)</b> 16:1;17:16;18:23; 25:1;33:23,24
<b>massive (1)</b> 66:23	<b>method (1)</b> 42:25	<b>month (3)</b> 19:16;39:23;66:5	<b>needs (4)</b> 22:5;42:12;48:3; 66:8	<b>noted (1)</b> 30:18
<b>materials (1)</b> 56:15	<b>Michael (2)</b> 20:15;24:1	<b>months (4)</b> 45:9,11,16;73:5	<b>negotiated (1)</b> 48:22	<b>notes (3)</b> 33:24;53:3;62:5
<b>matter (12)</b> 12:16;16:18; 26:15;27:1;52:8; 54:20,21,21;56:24; 57:12;62:18;70:13	<b>mid-December (1)</b> 32:25	<b>M-O-O (1)</b> 9:3	<b>negotiations (2)</b> 33:3;38:9	<b>November (2)</b> 19:16,16
<b>matters (27)</b> 12:7,25;13:9,12, 17,19,25;14:6,10; 15:3,4,10,17;17:2; 18:4,6,9,20;20:7; 21:18;31:25;32:14; 33:16;36:25;38:1; 42:2;47:3	<b>mid-February (1)</b> 33:4	<b>MOORE (6)</b> 6:7,8;15:9;2,2,3; 48:9	<b>New (22)</b> 4:6,15,23;5:6,15;	<b>Number (11)</b> 7:2,10;15:9,10; 36:19;43:23;44:4; 45:15;46:25;47:11; 50:10
<b>maximize (2)</b> 20:8;38:2	<b>might (1)</b> 7:11	<b>more (13)</b> 15:24;17:5;23:1; 31:17;33:12;36:18; 44:24,25;51:5,17; 55:4,5;61:19	<b>object (4)</b> 30:15;39:14; 40:20;67:2	<b>NY (6)</b> 4:6,15,23;5:6,15; 6:5
<b>may (15)</b> 15:23,25;22:18; 23:1,18,19;24:20; 28:13;32:5;39:18, 19;47:18;66:14,15; 68:14	<b>million (40)</b> 23:7;24:18,19,19; 25:23;26:19;33:25, 25;34:13,14,18,19, 25;35:9,21;36:11; 42:3,8;43:8,15; 46:23;48:23,24; 49:1;50:7;54:13; 58:18,20;59:3,4,6,8, 11,12,16;61:16,19; 64:17;66:4,15	<b>morning (16)</b> 7:5,8,10,12;8:14; 9:12,15,24;10:12; 17:11;41:7;48:10; 54:5,7;56:11,13	<b>objectionable (1)</b> 37:10	<b>objections (8)</b> 15:15;29:10; 32:18;37:1,4;47:7; 51:9;66:18
<b>maybe (7)</b> 14:7;55:6,6;66:2;	<b>million-dollar (4)</b> 16:2;25:1;49:21; 62:5	<b>most (8)</b> 32:9,10;33:1;38:3; 42:24;46:19;51:9; 63:19	<b>O</b>	
	<b>mind (1)</b> 44:2	<b>mostly (1)</b> 44:12		
	<b>minute (1)</b> 64:3	<b>mother (7)</b> 15:13;19:8;20:15; 26:10;34:4;36:24; 52:10		
	<b>mispronounced (1)</b> 41:10			

<b>obligation (4)</b> 25:23;26:11; 34:22;66:16	36:15;40:19,23; 43:5;45:6;46:10; 70:22;71:10;72:3,8,9	<b>owner (1)</b> 15:20	<b>Paul (1)</b> 58:22	<b>P-I-T-T-A (2)</b> 7:22;41:12
<b>obtain (5)</b> 57:4,9;62:15; 66:14;73:14	<b>orders (1)</b> 74:4	<b>ownership (2)</b> 25:8;36:2	<b>Pause (1)</b> 7:4	<b>place (7)</b> 19:15;26:5;37:15; 38:21;46:13;47:18; 67:19
<b>obtained (6)</b> 25:22;60:8;71:23, 25;72:5,15	<b>organize (1)</b> 12:18	<b>P</b>	<b>pay (8)</b> 26:9;34:8;42:10; 44:14,24;61:17,24; 68:12	<b>plaintiff (3)</b> 21:4;22:19;57:5
<b>obviously (12)</b> 13:21;20:12;25:7; 27:2,9;33:9;35:20; 58:19;61:14,19;66:1, 4	<b>origin (1)</b> 18:1	<b>pages (1)</b> 49:17	<b>payees (1)</b> 16:4	<b>plans (1)</b> 57:13
<b>occasions (1)</b> 51:6	<b>Orly (64)</b> 5:12;6:13;7:2;9:7; 13,18;13:19,21; 15:13;16:23;17:4,12, 21;19:8;20:15; 22:12,19;24:3,4,9, 11,12;25:3,6,18,24; 26:1,9,25;27:1,1; 28:5,11,15,20;34:9, 11;42:4;43:10; 48:25;49:6;51:4,21; 53:13;54:3,6,14,17; 59:7;60:19;61:1,5,6; 62:10,13,21,23,24; 63:21;64:19,21; 68:11;71:18,23	<b>paid (8)</b> 33:20,21;34:1; 35:10;48:23;49:21; 61:14,16	<b>payment (2)</b> 16:4;34:3	<b>platitudes (1)</b> 44:12
<b>occur (2)</b> 44:7,8	<b>OSWALD (13)</b> 6:8;8:14,14,23; 9:1,3;45:23;48:9,10, 10,13;54:15;59:6	<b>panel (1)</b> 31:14	<b>pendency (2)</b> 56:23;67:18	<b>play (2)</b> 23:6;46:9
<b>occurred (1)</b> 72:12	<b>others (2)</b> 20:12;30:25	<b>panels (1)</b> 64:22	<b>pending (26)</b> 11:12,13;14:4; 15:4,11;16:6,19; 18:7,12,14,17;19:5; 22:18,20;25:15;27:8, 17;32:4;35:3,4;43:1, 7;47:12,16,20;56:22	<b>Plaza (2)</b> 4:14;6:4
<b>October (3)</b> 13:6;19:14;52:16	<b>otherwise (2)</b> 42:10;47:18	<b>papers (3)</b> 11:22;16:2;56:19	<b>Penn (1)</b> 6:4	<b>please (13)</b> 7:21;8:22;9:9,19; 10:2;12:21;17:17; 18:23;31:5;69:22; 73:25;74:8,18
<b>off (5)</b> 30:9;47:6,12; 53:24;66:15	<b>out (20)</b> 20:9;24:14;29:7; 30:7;39:2;40:10; 41:18;42:6;43:3,16; 45:17,18;46:1,9,21; 47:8;57:13;65:5; 69:25;72:25	<b>Park (1)</b> 4:14	<b>percent (3)</b> 36:22;62:13,16	<b>plus (2)</b> 36:11;43:9
<b>OFFICE (1)</b> 5:2	<b>outline (2)</b> 50:22;67:13	<b>parking (2)</b> 35:25;36:2	<b>perfect (1)</b> 66:21	<b>PM (1)</b> 75:7
<b>offset (1)</b> 34:23	<b>outrageous (1)</b> 62:6	<b>part (11)</b> 22:22;25:6;26:3; 57:7;59:12,25;60:2, 3,4,15;61:18	<b>perhaps (10)</b> 17:4;25:4,10;29:8, 9;31:21;33:15; 35:17;39:11;57:20	<b>podium (1)</b> 30:25
<b>old (1)</b> 71:24	<b>outweigh (1)</b> 52:9	<b>partial (1)</b> 66:12	<b>period (2)</b> 25:10;39:9	<b>point (10)</b> 34:24;41:17,18, 22;43:3;63:1;65:8; 71:16;73:23,24
<b>once (3)</b> 7:20;44:25;74:10	<b>over (23)</b> 11:25;16:13; 22:25;27:11;30:4, 25;31:13,16;33:8; 39:16;44:5,18,25; 45:16;47:19;50:6; 51:12;52:7;53:22; 57:6;58:18;66:23; 71:21	<b>parties (59)</b> 12:13;13:20; 15:19;16:17;20:2,8; 21:3,14;24:5,6,10, 17,20;29:21;30:2,17; 31:16;32:10,20;33:1, 3,11;34:9,18;37:7, 23;38:3;39:8,13; 40:6,12;41:24;44:3, 15;45:17,22;47:22; 49:22;50:22;51:9, 14;52:19;53:17; 54:10,25;55:13,18, 22;56:14;63:20; 64:14;67:1,16,17; 70:3,16,16,19,20	<b>per (1)</b> 66:21	<b>points (3)</b> 55:4,11,15
<b>One (32)</b> 4:14;6:4;7:20; 9:16;11:10;12:9; 13:20;15:10,17; 21:24;22:12;27:9,20, 25;28:9,13;29:16; 31:20;32:14;36:17; 45:22;62:12,20;64:3, 11;65:4;66:22;68:2, 9,12;70:13;71:8	<b>over (23)</b> 11:25;16:13; 22:25;27:11;30:4, 25;31:13,16;33:8; 39:16;44:5,18,25; 45:16;47:19;50:6; 51:12;52:7;53:22; 57:6;58:18;66:23; 71:21	<b>parties' (2)</b> 43:25;67:20	<b>period (2)</b> 25:10;39:9	<b>policy (2)</b> 66:20;67:5
<b>one-half (2)</b> 35:18,19	<b>overview (1)</b> 11:6	<b>parties-in-interest (1)</b> 32:8	<b>permission (1)</b> 20:9	<b>Polk (1)</b> 58:21
<b>one's (1)</b> 50:1	<b>owed (2)</b> 58:18;61:18	<b>partner (5)</b> 7:15;20:16,16; 36:21;64:4	<b>personally (1)</b> 45:15	<b>Pollack (1)</b> 54:4
<b>ongoing (1)</b> 72:6	<b>own (3)</b> 9:25;27:4;49:24	<b>parts (1)</b> 38:8	<b>perspective (4)</b> 40:11;44:10; 73:21;74:14	<b>POLLOCK (30)</b> 5:11,17;9:12,12, 13;17:3,10,11,13,14, 18,19,21,24;24:8; 25:10;28:21;29:5, 13;54:5,5;56:1,4,6,8; 57:25;69:13;70:7,8, 10
<b>only (5)</b> 42:2;45:22;56:8; 62:24;72:24	<b>owned (3)</b> 28:4;54:18;62:21	<b>party (4)</b> 13:22;23:18;27:3; 67:9	<b>petition (1)</b> 15:11	<b>Pollock's (1)</b> 19:9
<b>open (1)</b> 63:6		<b>party-in-interest (1)</b> 10:16	<b>ph (3)</b> 14:7;34:18;35:12	<b>portion (1)</b> 37:15
<b>opportunity (2)</b> 32:13;74:11		<b>past (1)</b> 52:7	<b>Piazza (8)</b> 7:6,7,8;19:9,18; 20:19;32:1;50:9	<b>position (5)</b> 54:21;55:16;60:8; 61:24;62:12
<b>opposed (1)</b> 25:11			<b>picture (1)</b> 18:1	<b>positions (1)</b> 33:2
<b>opposition (1)</b> 71:17			<b>pieces (1)</b> 11:7	<b>possibility (1)</b> 15:25
<b>order (18)</b> 13:25;14:10,16,20, 23;19:15;30:17;			<b>PITTA (39)</b> 4:8;7:12,14,14,19, 22,22,25;8:3,5,8,11; 41:6,7,7,12,12,14,16; 47:14,16;49:19;52:5, 12;63:24;64:1,1,3,7; 65:23;66:7;68:10; 70:12,12,16,24;71:3, 14;74:9	<b>possible (3)</b> 45:3;58:25;59:17
				<b>posture (2)</b> 14:3;33:10
				<b>potential (10)</b>

15:14;21:3;29:1; 36:23;37:8;56:18, 20:66:14;72:10,12 <b>potentially (5)</b> 24:7;28:21;33:13; 44:8;67:25 <b>Powerball (2)</b> 60:14,25 <b>practice (1)</b> 18:13 <b>pre- (1)</b> 33:15 <b>prefer (1)</b> 68:6 <b>preference (1)</b> 36:14 <b>prejudice (1)</b> 61:1 <b>prepared (2)</b> 46:2;74:1 <b>PRESENT (3)</b> 6:11;33:14;66:16 <b>presentation (3)</b> 11:23;21:15;31:3 <b>presented (2)</b> 12:1;16:7 <b>presenting (1)</b> 39:25 <b>preserve (3)</b> 21:2;35:24;68:20 <b>preserved (2)</b> 34:21;66:17 <b>president (2)</b> 15:21;32:12 <b>press (3)</b> 47:8,11;67:3 <b>presumably (1)</b> 21:8 <b>presumption (1)</b> 66:25 <b>pre-trial (3)</b> 19:7,21,24 <b>prevent (3)</b> 43:6,13,13 <b>previously (4)</b> 25:17;59:10,12; 70:17 <b>primarily (1)</b> 50:17 <b>prior (19)</b> 12:24;13:8;23:12; 28:8;32:24;33:8,17; 36:6,22;37:9,10; 40:8;42:20;53:11; 61:5,6;65:5;71:22; 74:4 <b>priority (2)</b> 36:14,15 <b>probably (5)</b> 30:15;44:25; 49:16;69:2;70:1 <b>probate (1)</b> 18:10	<b>problem (3)</b> 65:20;67:25;73:18 <b>procedural (1)</b> 14:3 <b>proceed (15)</b> 22:21;24:15; 30:21;40:6;41:16; 45:12;46:2,4,15; 47:4;55:22;57:1; 62:18;70:5;74:18 <b>proceeding (11)</b> 12:24;21:25;26:3; 28:16;40:21;52:5; 54:8,9;56:18;57:2; 65:10 <b>proceedings (10)</b> 17:6;48:18;49:10, 25,25;51:12;52:16; 53:2,24;75:7 <b>proceeds (15)</b> 16:1;20:20;23:6; 24:6;33:23;36:13; 49:23;57:1;61:8,11; 62:3,10,13,16;64:25 <b>process (5)</b> 33:12;37:9;46:8,9, 13 <b>produce (1)</b> 72:14 <b>production (1)</b> 53:15 <b>progress (4)</b> 37:16,17,23;38:11 <b>promptly (1)</b> 57:2 <b>proper (2)</b> 13:22;27:3 <b>properly (2)</b> 43:10;65:1 <b>property (8)</b> 13:13;24:22,22, 24;50:8,8;54:14,15 <b>proposal (3)</b> 43:19,22;69:23 <b>proposed (1)</b> 13:9 <b>prosecuting (1)</b> 24:5 <b>prosecution (1)</b> 54:22 <b>prospect (1)</b> 44:17 <b>protect (1)</b> 50:5 <b>protective (2)</b> 72:3,8 <b>prove (1)</b> 63:10 <b>provide (8)</b> 11:21;15:24;17:5; 34:6;36:5,6,11;67:11 <b>provided (11)</b> 34:2,11;35:23;	43:23,24;58:18; 63:7;72:2,9;73:3,4 <b>prudent (1)</b> 63:19 <b>public (1)</b> 66:20 <b>public-art (1)</b> 52:10 <b>purchased (2)</b> 15:22;35:12 <b>purposes (1)</b> 47:10 <b>pursing (1)</b> 26:25 <b>pursuant (5)</b> 48:17,22;61:12, 23;72:7 <b>pursue (6)</b> 26:19;27:3;36:23; 49:9;57:3;62:19 <b>pursued (2)</b> 24:20;49:3 <b>pursuing (1)</b> 26:23 <b>push (2)</b> 20:8;24:14 <b>put (10)</b> 29:24;37:11; 39:10;44:20;47:6, 12;50:24;53:22,23; 69:7 <b>putting (1)</b> 29:17	67:12 <b>read (2)</b> 11:7,22 <b>ready (1)</b> 46:10 <b>real (1)</b> 44:17 <b>really (18)</b> 12:2;22:9;23:11; 29:9,20;33:2,3; 37:24;41:21;42:2, 11;50:4,18;54:12; 60:16;62:6;63:16; 65:7 <b>reason (5)</b> 16:20;42:12; 55:20;62:24;67:17 <b>reasons (5)</b> 54:23;55:3;64:11; 65:4;67:5 <b>recap (1)</b> 21:18 <b>recapture (1)</b> 43:6 <b>receive (2)</b> 33:22;35:9 <b>received (6)</b> 24:17,20;43:22; 45:17;52:24;58:20 <b>recent (1)</b> 14:24 <b>recently (2)</b> 12:15;23:17 <b>recognize (2)</b> 49:22;50:13 <b>recognized (3)</b> 60:16,22,23 <b>recommendation (1)</b> 53:21 <b>reconveyances (1)</b> 24:21 <b>record (8)</b> 17:8;27:12;51:10, 25;69:2,6;70:8; 71:24 <b>records (3)</b> 71:23;72:1,15 <b>recover (5)</b> 24:6;34:16;43:8; 62:3,4 <b>recovered (1)</b> 61:23 <b>recoveries (1)</b> 28:13 <b>Recovery (3)</b> 28:3,18;29:1 <b>reduced (1)</b> 36:1 <b>REED (3)</b> 4:12;10:13;58:7 <b>refer (1)</b> 61:9 <b>referenced (1)</b>	46:24 <b>referral (1)</b> 18:6 <b>referred (1)</b> 59:20 <b>referring (3)</b> 14:10;27:17;64:24 <b>refers (1)</b> 13:24 <b>regard (5)</b> 27:12;38:25; 64:17,23;72:23 <b>regarding (2)</b> 59:23;61:1 <b>Reitler (1)</b> 9:6 <b>rejoicing (1)</b> 31:23 <b>related (3)</b> 25:24;50:17;69:1 <b>relates (4)</b> 22:1;40:16;54:16; 71:1 <b>relating (3)</b> 22:11;59:7,22 <b>relationship (1)</b> 10:22 <b>relevant (3)</b> 41:22;65:5;73:13 <b>relief (5)</b> 38:16,16,19;57:5,9 <b>relitigated (1)</b> 64:13 <b>remain (4)</b> 21:4;25:9;37:15; 67:6 <b>remaining (2)</b> 49:23;70:19 <b>remains (1)</b> 37:16 <b>remand (1)</b> 18:7 <b>remedies (1)</b> 72:12 <b>remember (1)</b> 40:23 <b>removal (1)</b> 13:11 <b>remove (4)</b> 13:9;14:1,3;15:11 <b>removed (3)</b> 12:25;13:17;37:15 <b>repeat (1)</b> 40:18 <b>replete (1)</b> 52:23 <b>report (2)</b> 72:1;73:2 <b>reported (1)</b> 33:10 <b>represent (7)</b> 8:16;9:25;10:2; 17:11,22,24;36:21
		<b>Q</b>		
		<b>quash (1)</b> 22:1 <b>quick (1)</b> 16:15 <b>quickly (2)</b> 39:6;51:5 <b>quite (4)</b> 32:18;36:3;50:18; 73:21 <b>quote (1)</b> 64:19 <b>quote-unquote (1)</b> 52:17		
		<b>R</b>		
		<b>raise (4)</b> 29:10;70:13;71:8; 73:22 <b>raised (1)</b> 36:19 <b>reach (2)</b> 39:11;44:5 <b>reached (10)</b> 20:21;26:6;32:15, 24;33:17;37:8; 42:23;44:9;45:17;		

<b>representations (2)</b> 71:19;73:2	20:34;15;36:2,8,13; 38:23;40:4,14;41:6; 42:6;45:7;47:13; 48:4,6,8;51:16,20; 52:22,25;54:2,3; 55:25;56:7,10; 57:19;58:4;61:22; 63:13;64:8;67:2,22; 70:9,25,25;71:5; 72:16;73:22;74:3,5, 17	48:22,24;52:4,19; 53:10;59:8;60:7,13, 17,19,24;62:2,9,12; 71:14,22;72:2	<b>separately (3)</b> 20:14;34:16;55:14	71:18
<b>represented (2)</b> 28:11;34:20			<b>September (1)</b> 35:15	<b>sic (15)</b> 8:4;15:20;22:24; 25:19;26:1;37:3; 43:2;44:22;49:13; 50:12;51:21;52:5; 67:10;69:10;72:13
<b>representing (2)</b> 7:24;8:10		<b>S-A-G-I (1)</b> 8:5	<b>serious (1)</b> 73:21	
<b>represents (2)</b> 24:10;27:5		<b>Sagi/Genger (1)</b> 61:5	<b>seriously (1)</b> 32:19	<b>sic- (1)</b> 49:20
<b>request (1)</b> 45:23		<b>Sagi's (1)</b> 48:14	<b>serve (3)</b> 45:14,21;56:18	<b>side (5)</b> 15:15;35:20; 38:10;49:22;58:23
<b>requested (2)</b> 49:11;51:11	<b>rights (5)</b> 26:12;27:3;39:14; 50:8;66:17	<b>same (5)</b> 14:5;53:12;57:13; 62:19;63:8	<b>served (10)</b> 20:25;22:2;46:1,3, 7,11;53:10,10,12,13	<b>sideshows (1)</b> 46:25
<b>requests (3)</b> 51:11,13;53:14	<b>rise (2)</b> 32:5;39:18	<b>Satija (1)</b> 13:8	<b>service (1)</b> 20:2	<b>signed (2)</b> 14:23;19:15
<b>resolution (5)</b> 55:7,8,8;63:21; 74:24	<b>risks (1)</b> 66:13	<b>satisfaction (1)</b> 29:12	<b>set (1)</b> 75:1	<b>significant (1)</b> 37:17
<b>resolve (2)</b> 50:23;74:12	<b>Rocco (5)</b> 7:5;11:14;19:1; 30:20;65:18	<b>satisfied (1)</b> 57:3	<b>settled (1)</b> 58:17	<b>silly (1)</b> 68:24
<b>resolved (4)</b> 22:4;38:6;43:20; 51:8	<b>Rodriguez (2)</b> 69:22;74:18	<b>saying (1)</b> 73:24	<b>settlement (75)</b> 16:2;20:21;23:6; 24:6;28:12;32:15,17, 24;33:4,5,8,13,17,19, 21;34:2,21,22;35:7; 36:7,18;37:2,8,10, 14,18,21;38:6;39:11, 13,25,25;40:2;42:5, 21,23;44:1,5,6,8,12, 13,18;45:2;46:9; 47:17,23;48:1,17; 49:5,21;50:22; 52:25;53:4;54:13, 16;56:20;58:23,24; 59:2,3,5,13,14,21,23; 61:3,6;62:3,9,13,16; 66:14,19;67:12	<b>simply (5)</b> 21:2;39:16;60:22; 65:8;66:2
<b>Resources (5)</b> 15:20,22;42:10; 53:6;59:19	<b>rolling (1)</b> 32:2	<b>scenario (1)</b> 50:3		<b>sitting (3)</b> 13:18;14:1;22:4
<b>respect (10)</b> 22:21;25:7;37:9, 21;46:5;53:13; 66:20;67:15;68:3,4	<b>Ron (1)</b> 13:8	<b>schedule (7)</b> 38:24;39:1;45:13; 46:5,5,12;67:8		<b>situation (2)</b> 62:25;69:19
<b>respects (1)</b> 35:1	<b>Rosenblatt (1)</b> 9:7	<b>scheduled (1)</b> 19:7	<b>settlements (1)</b> 39:15	<b>sixteen (1)</b> 71:24
<b>respond (4)</b> 12:3;41:25;49:25; 64:4	<b>rule (1)</b> 32:17	<b>schedules (2)</b> 45:7;50:14	<b>settling (1)</b> 34:8	<b>Skadden (2)</b> 34:20;58:22
<b>responded (3)</b> 18:14;45:22,24	<b>ruled (1)</b> 64:18	<b>scheduling (2)</b> 40:1;70:5	<b>seven (1)</b> 59:7	<b>skeptical (1)</b> 44:2
<b>response (4)</b> 43:22;45:5,7; 65:23	<b>rules (1)</b> 71:1	<b>scope (1)</b> 16:12	<b>seventeen (1)</b> 24:19	<b>skeptically (1)</b> 55:6
<b>rest (1)</b> 50:25	<b>rulings (4)</b> 64:15,20;65:5; 67:19	<b>second (5)</b> 7:20;12:9;22:14; 25:21;64:22	<b>several (1)</b> 32:18	<b>skinnied-down (1)</b> 49:15
<b>result (2)</b> 16:1;60:19	<b>run (1)</b> 50:16	<b>seconds (1)</b> 63:16	<b>shame (1)</b> 50:18	<b>sleeves (1)</b> 32:2
<b>resulted (1)</b> 59:24	<b>running (1)</b> 61:20	<b>secured (3)</b> 34:12,14;37:19	<b>share (3)</b> 59:5,11;62:18	<b>sold (2)</b> 59:10,12
<b>retention (1)</b> 37:3	<b>rush (1)</b> 30:6	<b>seek (1)</b> 38:23	<b>shares (15)</b> 15:22;25:25;26:8; 48:25;51:2,3;54:16, 17,17;59:7,8,10,24; 61:2;64:20	<b>solely (1)</b> 64:19
<b>retired (1)</b> 44:4	<b>S</b>	<b>seeking (1)</b> 20:19	<b>shield (1)</b> 60:10	<b>somebody's (1)</b> 16:13
<b>review (1)</b> 51:10	<b>sad (1)</b> 62:25	<b>SEGAL (4)</b> 6:2,2;8:15,15	<b>short (2)</b> 31:3;55:4	<b>somehow (1)</b> 64:24
<b>revisions (1)</b> 30:3	<b>Safety (8)</b> 23:20,23;24:4,9; 26:23;54:10;56:2; 62:11	<b>S-E-G-I (1)</b> 8:4	<b>shortly (5)</b> 35:14;59:21; 60:23;61:2;62:1	<b>somewhere (1)</b> 52:19
<b>right (80)</b> 7:2,9,23;8:7,17; 9:5,8,19,23;10:8,11, 22;11:1,3,11,16; 14:12,24;15:1,7; 16:10,25;17:7; 18:15;19:10,20;20:4, 11,23;21:7,20;22:7; 25:13;27:13,22;29:3, 16;30:14;31:5;32:7,	<b>saga (2)</b> 22:23;42:25	<b>send (1)</b> 39:2	<b>showed (1)</b> 71:2	<b>son (3)</b> 26:6;48:19;60:4
	<b>Sagi (47)</b> 4:3;6:12;7:16,25; 19:8;22:1,13,14; 25:18,19,25;26:2,9, 10,17,20,25;27:10, 21;32:8;33:11;34:3, 4;35:20;36:19,23; 38:5,13;41:8;44:15;	<b>sending (1)</b> 14:21		<b>Sorry (25)</b> 7:19;8:2;10:1,14; 11:3,18;12:8,8,8,20; 14:19,20;17:13,13, 14;19:10;23:22; 41:10,12,13;51:22; 65:16;72:21;73:15, 16
		<b>sense (7)</b> 12:17;21:15; 30:16;40:15,19; 55:20,21		<b>sought (1)</b> 62:2
		<b>sent (1)</b> 46:18		<b>sounds (1)</b> 71:2
		<b>separate (9)</b> 24:10,25;25:5; 26:4,6,17,19;37:3; 64:21		



ORLY GINGER

Main Case No. 19-13895-jlg

March 4, 2020

<b>Southern (7)</b> 11:12;13:1,10,16; 19:17;42:24;52:20	<b>state- (1)</b> 31:21	47:6;74:23	24:21;18;27:16	56:12
<b>spanning (1)</b> 31:16	<b>state-court (3)</b> 11:8;32:3;36:25	<b>style (1)</b> 40:10	<b>surrogate-court (7)</b> 12:7,25;13:9; 15:17;16:18;17:5; 29:21	<b>thanks (5)</b> 11:3;48:6;58:2; 74:19;75:6
<b>sparsely (1)</b> 44:12	<b>stated (2)</b> 60:24;67:6	<b>styled (1)</b> 38:18	<b>Surrogate's (8)</b> 15:5;16:12,14; 18:2,3,8,9,9	<b>That'd (2)</b> 17:9;32:5
<b>speak (9)</b> 14:7;17:17;20:3, 13:21;6,9,16;38:23; 39:8	<b>statements (2)</b> 51:15;64:4	<b>submissions (1)</b> 40:9	<b>system (1)</b> 66:11	<b>that're (1)</b> 34:24
<b>SPEAKER (2)</b> 18:24,25	<b>status (11)</b> 11:11,11;19:24; 29:22;40:10;45:25; 67:9,15,17,21;68:4	<b>submit (3)</b> 56:15;68:6;74:9	<b>T</b>	<b>theoretically (1)</b> 34:15
<b>speaking (3)</b> 17:16;27:24;35:7	<b>statute (1)</b> 13:11	<b>submitted (1)</b> 70:21		<b>theory (1)</b> 65:24
<b>speaks (1)</b> 66:7	<b>statute-of- (1)</b> 21:2	<b>subpoena (5)</b> 22:1,2;27:19; 53:10,13	<b>table (1)</b> 62:19	<b>thereabouts (1)</b> 28:19
<b>specifically (1)</b> 73:12	<b>statute-of-limitations (1)</b> 47:10	<b>subpoenas (8)</b> 39:2;45:18,19,21; 46:1,3,7,11	<b>tabled (2)</b> 29:3,5	<b>thereafter (4)</b> 21:16;26:12; 35:14;40:2
<b>speed (1)</b> 32:22	<b>stay (9)</b> 24:7,13;25:10; 28:22;37:25;53:25; 55:2,2;67:6	<b>subsequent (1)</b> 49:5	<b>tactic (1)</b> 39:16	<b>therefore (1)</b> 72:25
<b>spell (2)</b> 9:8,19	<b>stayed (5)</b> 25:9,16;26:15,17; 29:8	<b>substance (1)</b> 47:19	<b>tactics (3)</b> 39:3;53:19;62:7	<b>therein (1)</b> 23:19
<b>spelled (1)</b> 23:25	<b>steal (1)</b> 60:9	<b>subtract (1)</b> 58:19	<b>talk (4)</b> 59:6,16;70:5;74:1	<b>there'll (1)</b> 30:3
<b>spend (1)</b> 11:9	<b>stemming (1)</b> 54:13	<b>success (1)</b> 66:8	<b>talked (3)</b> 29:2;41:19;69:15	<b>there're (4)</b> 11:7;30:14;33:24; 38:7
<b>spent (1)</b> 73:1	<b>step (1)</b> 37:12	<b>successor (5)</b> 7:7;17:24,25; 19:19;63:5	<b>talking (8)</b> 18:16;51:3;54:12; 58:8,21,24;59:17; 69:5	<b>thinking (1)</b> 40:16
<b>spoke (2)</b> 13:18;36:25	<b>steps (1)</b> 74:20	<b>sue (1)</b> 73:7	<b>targets (1)</b> 37:8	<b>third (1)</b> 34:16
<b>spoken (2)</b> 22:9;45:15	<b>still (5)</b> 33:25;35:2,2; 61:18,20	<b>suggest (1)</b> 45:12	<b>Tarter (5)</b> 7:6;11:15;19:2; 31:2;65:18	<b>third-party (1)</b> 10:15
<b>spots (2)</b> 35:25;36:2	<b>stipulation (3)</b> 13:24;14:22;70:18	<b>suggestion (4)</b> 14:8;51:15;56:14; 67:8	<b>team (2)</b> 33:11;36:19	<b>thirteen (2)</b> 40:16,17
<b>spouse (1)</b> 10:25	<b>stock (1)</b> 48:19	<b>Suite (1)</b> 5:5	<b>TEDCO (2)</b> 20:19;24:2	<b>thirty-three (1)</b> 36:22
<b>spread (1)</b> 62:19	<b>stolen (1)</b> 64:24	<b>summaries (1)</b> 49:11	<b>telling (1)</b> 40:12	<b>thirty-two (11)</b> 23:7;24:18,19; 42:3,7;43:8,15; 54:12;64:17;66:4,15
<b>stab (1)</b> 30:1	<b>stop (1)</b> 48:1	<b>summarizing (1)</b> 17:1	<b>ten (4)</b> 31:17;33:20;55:5; 59:6	<b>THOMAS (6)</b> 4:8;7:14;41:7,12; 64:1;70:12
<b>stagnant (1)</b> 21:4	<b>storage (2)</b> 35:25;36:2	<b>summary (7)</b> 29:19;31:1;49:12, 15:51;15;69:7;70:2	<b>tend (1)</b> 64:13	<b>thoroughly (2)</b> 63:3,4
<b>stake (1)</b> 66:4	<b>straight (1)</b> 14:2	<b>summer (2)</b> 41:23;45:5	<b>term (1)</b> 50:4	<b>thought (3)</b> 31:5;68:11,25
<b>stand (8)</b> 11:6;46:14;56:2; 69:8,13,14;70:3; 74:25	<b>Street (1)</b> 5:13	<b>supplement (1)</b> 27:12	<b>terminate (1)</b> 47:24	<b>thousands (1)</b> 31:13
<b>standing (4)</b> 13:22,25;27:3; 54:11	<b>Strine (4)</b> 60:13,16,22,23	<b>supposed (1)</b> 60:18	<b>terms (3)</b> 33:5,9;39:25	<b>threatened (1)</b> 73:6
<b>start (6)</b> 11:5;17:16;32:7, 21;33:3;66:25	<b>strongly (1)</b> 29:9	<b>supposedly (1)</b> 45:6	<b>terrible (1)</b> 44:10	<b>three (12)</b> 19:5;21:18;22:25; 27:17;33:6;34:17,19, 25;45:9,10,16;69:25
<b>started (6)</b> 12:23;16:18;18:5; 19:13;32:2,2	<b>structure (1)</b> 37:14	<b>Supreme (2)</b> 22:10;27:19	<b>terrific (3)</b> 48:6;58:2;70:11	<b>threshold (1)</b> 56:24
<b>starting (1)</b> 62:1	<b>stuck (1)</b> 45:9	<b>Sure (11)</b> 16:16;17:15;22:3; 30:3;31:21,23; 49:10;56:6;58:4; 64:6;73:17	<b>testified (1)</b> 53:1	<b>thrown (1)</b> 58:12
<b>state (6)</b> 14:5;15:5;16:8; 27:19;65:7;67:20	<b>studied (1)</b> 22:9	<b>surprisingly (1)</b> 60:25	<b>Texas (15)</b> 12:24,24;13:4,14, 15:19;15;35:12; 44:9;45:9,18,19; 52:15;63:4,9;71:17	<b>ticket (2)</b> 60:14,25
	<b>study (1)</b> 23:11	<b>surrogate (8)</b> 15:3;16:6,9,10,20,	<b>thanking (1)</b>	<b>tied (1)</b> 53:8

<b>till (1)</b> 19:16 <b>times (4)</b> 22:24;44:4;45:16; 50:7 <b>timing (2)</b> 47:9;69:16 <b>timingwise (1)</b> 69:11 <b>today (16)</b> 7:11;9:14;11:19; 12:10;18:12;29:6; 38:6;46:2,14;61:20; 63:5;71:6,13,15; 73:22;74:22 <b>together (11)</b> 7:15;13:23;29:17, 18,24;30:9;42:19; 69:7,18;70:4;74:25 <b>TOGUT (2)</b> 6:2;8:15 <b>TOKAYER (20)</b> 5:8;9:24,24;10:3, 5,7,9;12:15;21:10; 56:10,11,11;57:16, 18,20,22;58:1,3; 69:11,16 <b>Tokayer's (1)</b> 21:6 <b>TOKER (1)</b> 5:2 <b>told (3)</b> 20:25;38:22;52:5 <b>took (4)</b> 19:15,16;32:18; 67:19 <b>TORRES (1)</b> 4:20 <b>total (1)</b> 33:25 <b>touch (1)</b> 74:18 <b>towards (1)</b> 74:24 <b>TPR (10)</b> 4:3;7:16,25;8:11; 22:15;41:8;52:4; 59:9,15;65:1 <b>Trans (1)</b> 59:19 <b>transaction (2)</b> 48:21;53:1 <b>transactions (1)</b> 49:2 <b>transcript (1)</b> 17:15 <b>transfer (11)</b> 13:12;19:14,15; 23:7;33:18;38:14,17, 18;42:19;44:21; 72:23 <b>transferees (1)</b> 41:24	<b>transferred (12)</b> 13:7,15;32:16,17; 38:12;42:5,24; 43:16;45:10;49:13; 62:4,6 <b>transfers (3)</b> 26:24;46:21;49:4 <b>Trans-Resources (1)</b> 48:15 <b>travel (2)</b> 71:23;72:1 <b>TRI (5)</b> 15:20,22;25:25; 59:20;64:20 <b>trial (2)</b> 33:16;46:5 <b>tried (2)</b> 11:25;38:7 <b>trigger (1)</b> 30:9 <b>Trump (22)</b> 15:20;16:4;25:1; 33:23,23;34:1,3,6,6, 7,15,19;35:3;36:10; 52:25;58:17,24; 59:10,19,20;61:2,6 <b>Trumps (6)</b> 48:21,23;49:3,6, 21,23 <b>Trust (42)</b> 5:12;9:13,18; 16:23,23;17:4,12,21; 20:18,20;24:2,3,5, 11,24;25:3,5;26:2,2, 18,25;28:5,15,20; 48:24,25;51:4;54:3, 6,14,17;59:7;60:2,3; 61:1,7,8,8,12,23; 62:14,21 <b>trustee (50)</b> 7:7;11:5,15;12:25; 13:8,8,20,22;15:12; 17:24;18:14;19:2,9, 19,23;21:5;22:20; 24:10,12;27:2;29:2; 32:15,24;33:18; 35:22;36:6,22;37:9, 24;38:1,2;39:19; 42:20;43:18,19,20, 21,23,24;44:1;47:22; 49:15;50:21;53:22; 63:4,5,8,9;66:9; 71:22 <b>trustees (2)</b> 34:5;63:6 <b>trustee's (10)</b> 30:1;31:12;33:8; 37:10;39:6,16; 41:19;45:1;50:12; 56:20 <b>trusts (3)</b> 18:4;34:5;48:18 <b>try (13)</b>	20:8;31:2;37:12, 13;38:22;39:16; 51:18;60:9;62:22; 68:20,25;69:12; 73:21 <b>trying (12)</b> 23:4;33:7;35:4; 44:1;45:1;50:5; 60:17,24;62:15,18; 68:24;69:7 <b>tune (1)</b> 50:6 <b>turn (2)</b> 30:23,25 <b>turned (3)</b> 27:1;51:12;71:21 <b>turnover (11)</b> 41:25;43:1;46:15, 18;47:2;50:10;62:9; 65:9;66:2,6,9 <b>turnover-motion (1)</b> 44:21 <b>twelve (2)</b> 27:11,16 <b>twenty (6)</b> 43:5;48:16;50:17; 52:7;58:18,20 <b>twenty-five (1)</b> 49:17 <b>twenty-seven (1)</b> 59:11 <b>twice (1)</b> 64:18 <b>two (30)</b> 11:17;12:5,25; 13:9,12,17;21:18; 22:10,25;23:10;24:1, 10;27:9,16,19,21; 33:6,24;34:14;36:24, 25;37:24;40:9; 53:15;62:4;63:16; 66:6;67:9;69:24; 70:1	<b>UNIDENTIFIED (2)</b> 18:24,25 <b>uniform (1)</b> 31:20 <b>UNISON (1)</b> 75:5 <b>units (2)</b> 35:25;36:3 <b>unless (2)</b> 14:8;28:13 <b>unlike (2)</b> 43:4;52:4 <b>unreasonable (1)</b> 66:19 <b>up (17)</b> 14:21;16:13,14,20, 24;22:24;32:2,22; 34:10;45:25;46:12; 50:16;53:8;55:15; 57:11;68:1;71:13 <b>update (1)</b> 67:15 <b>updates (2)</b> 67:9;68:4 <b>upon (3)</b> 38:25;51:10;53:13 <b>upset (1)</b> 49:2 <b>use (2)</b> 39:15;60:11 <b>used (4)</b> 50:4;60:8;61:17, 24 <b>using (1)</b> 62:20 <b>usually (1)</b> 66:5	<b>views (3)</b> 67:11,20;70:3 <b>violated (1)</b> 74:4 <b>violation (2)</b> 28:22;72:9 <b>violations (1)</b> 72:11 <b>virtually (1)</b> 64:14 <b>virtue (1)</b> 36:1 <b>Vyskocil (2)</b> 23:17;27:20
<b>W</b>				
<b>Wachtel (1)</b> 28:10 <b>wait (1)</b> 15:3 <b>waiting (2)</b> 23:10;56:19 <b>waive (1)</b> 36:13 <b>walk (2)</b> 30:17;74:20 <b>walking (1)</b> 29:20 <b>warranted (1)</b> 66:22 <b>waste (1)</b> 53:6 <b>waters (1)</b> 39:20 <b>way (8)</b> 16:8;28:25;30:18; 31:17;33:5;40:6,21; 74:5 <b>wealth (4)</b> 60:1,10,15,18 <b>weeks (7)</b> 33:12;40:9;53:15; 67:9;69:24;70:1,1 <b>weeks' (1)</b> 49:14 <b>Weiss (1)</b> 58:22 <b>weren't (1)</b> 44:16 <b>Western (1)</b> 13:4 <b>whatnot (1)</b> 42:22 <b>what's (6)</b> 8:9;10:22;16:10, 19;41:21;56:16 <b>whenever (1)</b> 67:10 <b>Whereupon (1)</b> 75:7 <b>wherever (1)</b> 62:22				
<b>V</b>				
<b>vacation (1)</b> 45:7 <b>valid (3)</b> 26:11;35:8;45:19 <b>valuable (1)</b> 36:3 <b>value (5)</b> 20:8;35:19,25; 38:2;50:18 <b>various (13)</b> 15:18;17:1;24:5; 34:5;49:24;51:11; 64:16;69:7;70:5,16, 16;73:13;74:20 <b>venue (6)</b> 38:14,19;42:20; 45:10;47:21;52:21 <b>vexatious (1)</b> 53:18 <b>view (3)</b> 16:16;30:5;57:6 <b>viewed (1)</b> 37:10				
<b>U</b>				
<b>UCCs (1)</b> 34:12 <b>ultimate (1)</b> 66:3 <b>ultimately (4)</b> 35:5;50:24;58:17; 59:14 <b>unable (1)</b> 44:5 <b>unanimously (1)</b> 64:21 <b>under (7)</b> 13:25;24:23; 34:22;36:15;39:14; 52:24;71:23 <b>unfortunately (1)</b> 38:4				

ORLY GINGER

Main Case No. 19-13895-jlg

March 4, 2020

<b>whoa (3)</b> 7:18,18,18 <b>whole (2)</b> 55:18;73:8 <b>who's (9)</b> 8:24,24;17:16; 26:5;27:9,10;34:13; 50:24;71:15 <b>wife (1)</b> 26:5 <b>wife's (1)</b> 60:4 <b>Willin (1)</b> 51:22 <b>willing (1)</b> 47:6 <b>willingness (1)</b> 69:6 <b>win (2)</b> 44:24;66:9 <b>wins (1)</b> 62:18 <b>wish (5)</b> 30:15;41:16;58:5; 63:13;65:12 <b>Within (3)</b> 32:1;33:12,20 <b>without (2)</b> 68:6;69:20 <b>witness (1)</b> 71:17 <b>Wlodinguer (8)</b> 8:18,18,20;9:6,6, 10;51:24;52:2 <b>W-L-O-D-I-N-G-U-E-R (1)</b> 9:10 <b>Woldinguer (1)</b> 52:2 <b>Wolinger (1)</b> 51:21 <b>word (1)</b> 60:11 <b>words (1)</b> 68:11 <b>work (12)</b> 29:17;32:12;33:1; 39:10,17;43:18; 67:16;69:12,23; 70:6;72:12;74:24 <b>worked (4)</b> 13:23;24:8;43:22; 50:8 <b>working (3)</b> 29:13;36:4;50:22 <b>world (2)</b> 53:16;57:12 <b>worries (1)</b> 12:22 <b>worth (1)</b> 35:21 <b>write (1)</b> 55:9 <b>wrong (3)</b>	41:19;47:21;73:25 <b>wrote (3)</b> 40:25;41:2,2	<b>16th (1)</b> 53:15 <b>17.3 (2)</b> 26:19;61:16 <b>18th (1)</b> 14:23 <b>19- (1)</b> 7:2 <b>1993 (1)</b> 5:12 <b>1-million- (1)</b> 35:6	<b>32.3 (3)</b> 46:23;59:3,16 <b>32.3- (1)</b> 16:1 <b>32.3-million-dollar (2)</b> 20:20;46:20	
	<b>Y</b>	<b>year (2)</b> 41:23;61:6 <b>years (26)</b> 11:25;23:1,10; 27:11;31:13,14,16, 18;37:24;39:4; 41:20,21;43:5;44:5; 48:16;49:4,7;50:17; 52:8,12;55:5;58:23; 60:12;64:12;66:24; 71:24 <b>yesterday (1)</b> 38:4 <b>York (18)</b> 4:6,15,23;5:6,15; 6:5;11:12;13:10,16; 15:4;19:12;22:3; 27:19;45:20;46:1; 49:14;52:20,22	<b>2</b>	<b>4</b>
	<b>Z</b>	<b>Zeichner (2)</b> 28:9;68:16	<b>2.4 (1)</b> 35:21 <b>2.5 (1)</b> 35:22 <b>200,000 (2)</b> 36:6,12 <b>2004 (1)</b> 26:2 <b>2008 (1)</b> 48:21 <b>2009 (1)</b> 16:18 <b>2012 (2)</b> 35:12;61:5 <b>2013 (10)</b> 20:22;24:6;28:12; 34:2;35:12;42:5; 49:4;54:13;61:3,3 <b>2016 (2)</b> 35:15,15 <b>2018 (1)</b> 25:20 <b>2019 (5)</b> 13:2,4;25:21; 26:14;28:5 <b>20th (1)</b> 28:19 <b>23rd (1)</b> 52:16 <b>2400 (1)</b> 5:5 <b>24th (1)</b> 5:14 <b>250,000 (1)</b> 33:19 <b>26.7 (1)</b> 48:23	<b>4.5 (3)</b> 34:13;35:9;61:19 <b>420 (1)</b> 5:4
	<b>1</b>	<b>1,000,000-dollar (1)</b> 33:19 <b>1:51 (1)</b> 75:7 <b>10 (1)</b> 59:13 <b>10.3 (1)</b> 48:24 <b>10.7 (1)</b> 59:13 <b>10004 (2)</b> 4:15;5:15 <b>10019 (1)</b> 4:23 <b>10119 (1)</b> 6:5 <b>10170 (1)</b> 5:6 <b>10271 (1)</b> 4:6 <b>11th (1)</b> 19:17 <b>120 (1)</b> 4:5 <b>13895 (1)</b> 7:3 <b>15 (1)</b> 33:25 <b>1633 (1)</b> 4:22	<b>3</b>	<b>5</b>
			<b>3.5 (2)</b> 25:22;35:21 <b>30th (1)</b> 24:14 <b>31st (2)</b> 55:3;56:4 <b>32.2 (1)</b> 49:20	<b>5.4 (1)</b> 34:18 <b>5th (1)</b> 19:16
				<b>6</b>
				<b>60 (1)</b> 5:13
				<b>7</b>
				<b>7 (2)</b> 7:7;51:16 <b>7.4 (2)</b> 49:1;59:13 <b>7.5 (1)</b> 33:24 <b>7.5- (1)</b> 62:4 <b>750,000 (3)</b> 33:21,22;35:10 <b>7th (11)</b> 19:25;33:15; 39:23;40:8;56:3,4,8; 57:14;67:10;69:16, 25
				<b>9</b>
				<b>9019 (1)</b> 47:25